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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 554.

NATIONAL BROADCASTING COMPANY, INC., WOODMEN OF THE WORLD LIFE INSURANCE SOCIETY and STROMBERG-CARLSON TELEPHONE MANUFACTURING COMPANY,

Appellants,

vs.

UNITED STATES OF AMERICA and the FEDERAL COMMUNICATIONS COMMISSION.

MUTUAL BROADCASTING SYSTEM, INC.,

Intervenor.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

APPENDICES TO BRIEF FOR APPELLANT NATIONAL BROADCASTING COMPANY, INC.

JOHN T. CAHILL,
Solicitor for National Broadcasting Company, Inc.

Of Counsel:
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JOHN W. NIELDS

Table of Appendices.

APPENDIX A.

Provisions of the Communications Act of 1934, as Amended, Pertinent to This Appeal.

Title I—General Provisions.

Section 3. For the purposes of this Act unless the context otherwise requires——

* * * * * *

(h) 'Common carrier' or 'carrier' means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or in interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this Act; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.

* * * * * *

(p) 'Chain broadcasting' means simultaneous broadcasting of an identical program by two or more connected stations.

Section 4.

* * * * * *

(i) The Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions.

(j) The Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. No commissioner shall participate in any hearing or proceeding in which he has a pecuniary interest. Any party may appear before the Commission and be heard in person or by attor-

ney. Every vote and official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of any party interested. The Commission is authorized to withhold publication of records or proceedings containing secret information affecting the national defense.

Title III—Provisions Relating to Radio.

Part I—General Provisions.

Section 301. It is the purpose of this Act, among other things, to maintain the control of the United States over all the channels of interstate and foreign radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license. No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any Territory or possession of the United States or in the District of Columbia to another place in the same Territory, possession, or District; or (b) from any State, Territory, or possession of the United States, or from the District of Columbia to any other State, Territory, or possession of the United States; or (c) from any place in any State, Territory, or possession of the United States, or in the District of Columbia, to any place in any foreign country or to any vessel; or (d) within any State when the effects of such use extend beyond the borders of said State, or when interference is caused by such use or operation with the transmission of such energy, communications, or signals from within said State to any place beyond its borders, or from any place beyond its borders to any place within said State, or with the transmission or reception of such energy, communications, or signals from and/or to places beyond the borders of said State; or (e) upon any vessel or aircraft of the United States; or (f) upon any other mobile stations within the jurisdiction of the United

States, except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.

* * * * * *

Section 303. Except as otherwise provided in this Act, the Commission from time to time, as public convenience, interest, or necessity requires, shall——

(a) Classify radio stations;

(b) Prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class;

(c) Assign bands of frequencies to the various classes of stations, and assign frequencies for each individual station and determine the power which each station shall use and the time during which it may operate;

(d) Determine the location of classes of stations or individual stations;

(e) Regulate the kind of apparatus to be used with respect to its external effects and the purity and sharpness of the emissions from each station and from the apparatus therein;

(f) Make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of this Act: *Provided, however,* That changes in the frequencies, authorized power, or in the times of operation of any station, shall not be made without the consent of the station licensee unless, after a public hearing, the Commission shall determine that such changes will promote public convenience or interest or will serve public necessity, or the provisions of this Act will be more fully complied with;

(g) Study new uses for radio, provide for experimental uses of frequencies, and generally encourage the

larger and more effective use of radio in the public interest;

(h) Have authority to establish areas or zones to be served by any station;

(i) Have authority to make special regulations applicable to radio stations engaged in chain broadcasting;

(j) Have authority to make general rules and regulations requiring stations to keep such records of programs, transmissions of energy, communications, or signals as it may deem desirable;

(k) Have authority to exclude from the requirements of any regulations in whole or in part any radio station upon railroad rolling stock, or to modify such regulations in its discretion;

(l) Have authority to prescribe the qualifications of station operators, to classify them according to the duties to be performed, to fix the forms of such licenses, and to issue them to such citizens of the United States as the Commission finds qualified;

(m) (1) Have authority to suspend the license of any operator upon proof sufficient to satisfy the Commission that the licensee——

(A) has violated any provision of any Act, treaty, or convention binding on the United States, which the Commission is authorized to administer, or any regulation made by the Commission under any such Act, treaty, or convention; or

(B) has failed to carry out a lawful order of the master or person lawfully in charge of the ship or aircraft on which he is employed; or

(C) has willfully damaged or permitted radio apparatus or installations to be damaged; or

(D) has transmitted superfluous radio communications or signals or communications containing profane or obscene words, language, or meaning, or has knowingly transmitted—

(1) false or deceptive signals or communications, or

(2) a call signal or letter which has not been assigned by proper authority to the station he is operating; or

(E) has willfully or maliciously interferred with any other radio communications or signals; or

(F) has obtained or attempted to obtain, or has assisted another to obtain or attempt to obtain, an operator's license by fraudulent means.

(2) No order of suspension of any operator's license shall take effect until fifteen days' notice in writing thereof, stating the cause for the proposed suspension, has been given to the operator licensee who may make written application to the Commission at any time within said fifteen days for a hearing upon such order. The notice to the operator licensee shall not be effective until actually received by him, and from that time he shall have fifteen days in which to mail the said application. In the event that physical conditions prevent mailing of the application at the expiration of the fifteen-day period, the application shall then be mailed as soon as possible thereafter, accompanied by a satisfactory explanation of the delay. Upon receipt by the Commission of such application for hearing, said order of suspension shall be held in abeyance until the conclusion of the hearing which shall be conducted under such rules as the Commission may prescribe. Upon the conclusion of said hearing the Commission may affirm, modify, or revoke said order of suspension.

(n) Have authority to inspect all radio installations associated with stations required to be licensed

by any Act or which are subject to the provisions of any Act, treaty or convention binding on the United States, to ascertain whether in construction, installation, and operation they conforms [*sic*] to the requirements of the rules and regulations of the Commission, the provisions of any Act, the terms of any treaty or convention binding on the United States, and the conditions of the license or other instrument of authorization under which they are constructed, installed, or operated.

(o) Have authority to designate call letters of all stations;

(p) Have authority to cause to be published such call letters and such other announcements and data as in the judgment of the Commission may be required for the efficient operation of radio stations subject to the jurisdiction of the United States and for the proper enforcement of this Act.

(q) Have authority to require the painting and/or illumination of radio towers if and when in its judgment such towers constitute, or there is a reasonable possibility that they may constitute, a menace to air navigation.

(r) Make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act, or any international radio or wire communications treaty or convention, or regulations annexed thereto, including any treaty or convention insofar as it relates to the use of radio, to which the United States is or may hereafter become a party.

* * * * * *

Section 307. (a) The Commission, if public convenience, interest, or necessity will be served thereby, subject to the limitations of this Act, shall grant to any applicant therefor a station license provided for by this Act.

(b) In considering applications for licenses, and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.

(c) The Commission shall study the proposal that Congress by statute allocate fixed percentages of radio broadcasting facilities to particular types or kinds of non-profit radio programs or to persons identified with particular types or kinds of non-profit activities, and shall report to Congress, not later than February 1, 1935, its recommendations together with the reasons for the same.

(d) No license granted for the operation of a broadcasting station shall be for a longer term than three years and no license so granted for any other class of station shall be for a longer term than five years, and any license granted may be revoked as hereinafter provided. Upon the expiration of any license, upon application therefor, a renewal of such license may be granted from time to time for a term of not to exceed three years in the case of broadcasting licenses and not to exceed five years in the case of other licenses, but action of the Commission with reference to the granting of such application for the renewal of a license shall be limited to and governed by the same considerations and practice which affect the granting of original applications.

(e) No renewal of an existing station license shall be granted more than thirty days prior to the expiration of the original license.

Section 308. (a) The Commission may grant licenses, renewal of licenses, and modification of licenses only upon written application therefor received by it: *Provided, however*, That in cases of emergency found by the Commission, licenses, renewals of licenses, and modifications

of licenses, for stations on vessels or aircraft of the United States, may be issued under such conditions as the Commission may impose, without such formal application. Such licenses, however, shall in no case be for a longer term than three months: *Provided further*, That the Commission may issue by cable, telegraph, or radio a permit for the operation of a station on a vessel of the United States at sea, effective in lieu of a license until said vessel shall return to a port of the continental United States.

(b) All such applications shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station; the ownership and location of the proposed station and of the stations, if any, with which it is proposed to communicate; the frequencies and the power desired to be used; the hours of the day or other periods of time during which it is proposed to operate the station; the purposes for which the station is to be used; and such other information as it may require. The Commission, at any time after the filing of such original application and during the term of any such license, may require from an applicant or licensee further written statements of fact to enable it to determine whether such original application should be granted or denied or such license revoked. Such application and/or such statement of fact shall be signed by the applicant and/or licensee under oath or affirmation.

(c) The Commission in granting any license for a station intended or used for commercial communication between the United States or any Territory or possession, continental or insular, subject to the jurisdiction of the United States, and any foreign country, may impose any terms, conditions, or restrictions authorized to be imposed with respect to submarine-cable licenses by section 2 of an Act entitled "An Act relating to the landing and operation of submarine cables in the United States", approved May 24, 1921.

Section 309. (a) If upon examination of any application for a station license or for the renewal or modification of a station license the Commission shall determine that public interest, convenience, or necessity would be served by the granting thereof, it shall authorize the issuance, renewal, or modification thereof in accordance with said finding. In the event the Commission upon examination of any such application does not reach such decision with respect thereto, it shall notify the applicant thereof, shall fix and give notice of a time and place for hearing thereon, and shall afford such applicant an opportunity to be heard under such rules and regulations as it may prescribe.

(b) Such station licenses as the Commission may grant shall be in such general form as it may prescribe, but each license shall contain, in addition to other provisions, a statement of the following conditions to which such license shall be subject:

(1) The station license shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof nor in any other manner than authorized therein.

(2) Neither the license nor the right granted thereunder shall be assigned or otherwise transferred in violation of this Act.

(3) Every license issued under this Act shall be subject in terms to the right of use or control conferred by section 606 hereof.

Section 310. (a) The station license required hereby shall not be granted to or held by—

(1) Any alien or the representative of any alien;

(2) Any foreign government or the representative thereof;

(3) Any corporation organized under the laws of any foreign government;

(4) Any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country;

(5) Any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted, after June 1, 1935, by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country; if the Commission finds that the public interest will be served by the refusal or the revocation of such license.

Nothing in this subsection shall prevent the licensing of radio apparatus on board any vessel, aircraft, or other mobile station of the United States when the installation and use of such apparatus is required by Act of Congress or any treaty to which the United States is a party.

(b) The station license required hereby the frequencies authorized to be used by the licensee, and the rights therein granted shall not be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of, or indirectly by transfer of control of any corporation holding such license, to any person, unless the Commission shall, after securing full information, decide that said transfer is in the public interest, and shall give its consent in writing.

Section 311. The Commission is hereby directed to refuse a station license and/or the permit hereinafter required for the construction of a station to any person (or to any person directly or indirectly controlled by such person) whose license has been revoked by a court under section 313, and is hereby authorized to refuse such station license and/or permit to any other person

(or to any person directly or indirectly controlled by such person) which has been finally adjudged guilty by a Federal court of unlawfully monopolizing or attempting unlawfully to monopolize, radio communication, directly or indirectly, through the control of the manufacture or sale of radio apparatus, through exclusive traffic arrangements, or by any other means, or to have been using unfair methods of competition. The granting of a license shall not estop the United States or any person aggrieved from proceeding against such person for violating the law against unfair methods of competition or for a violation of the law against unlawful restraints and monopolies and/or combinations, contracts, or agreements in restraint of trade, or from instituting proceedings for the dissolution of such corporation.

Section 312. (a) Any station license may be revoked for false statements either in the application or in the statement of fact which may be required by section 308 hereof, or because of conditions revealed by such statements of fact as may be required from time to time which would warrant the Commission in refusing to grant a license on an original application, or for failure to operate substantially as set forth in the license, or for violation of or failure to observe any of the restrictions and conditions of this Act or of any regulation of the Commission authorized by this Act or by a treaty ratified by the United States: *Provided, however*, That no such order of revocation shall take effect until fifteen days' notice in writing thereof, stating the cause for the proposed revocation, has been given to the licensee. Such licensee may make written application to the Commission at any time within said fifteen days for a hearing upon such order, and upon the filing of such written application said order of revocation shall stand suspended until the conclusion of the hearing conducted under such rules as the Commission may prescribe. Upon the conclusion of said hearing the Commission may affirm, modify, or revoke said order of revocation.

(b) Any station license hereafter granted under the provisions of this Act or the construction permit required hereby and hereafter issued, may be modified by the Commission either for a limited time or for the duration of the term thereof, if in the judgment of the Commission such action will promote the public interest, convenience, and necessity, or the provisions of this Act or of any treaty ratified by the United States will be more fully complied with: *Provided, however,* That no such order of modification shall become final until the holder of such outstanding license or permit shall have been notified in writing of the proposed action and the grounds or reasons therefor and shall have been given reasonable opportunity to show cause why such an order of modification should not issue.

Section 313. All laws of the United States relating to unlawful restraints and monopolies and to combinations, contracts, or agreements in restraint of trade are hereby declared to be applicable to the manufacture and sale of and to trade in radio apparatus and devices entering into or affecting interstate or foreign commerce and to interstate or foreign radio communications. Whenever in any suit, action, or proceeding, civil or criminal, brought under the provisions of any of said laws or in any proceedings brought to enforce or to review findings and orders of the Federal Trade Commission or other governmental agency in respect of any matters as to which said Commission or other governmental agency is by law authorized to act, any licensee shall be found guilty of the violation of the provisions of such laws or any of them, the court, in addition to the penalties imposed by said laws, may adjudge, order, and/or decree that the license of such licensee shall, as of the date the decree or judgment becomes finally effective or as of such other date as the said decree shall fix, be revoked and that all rights under such license shall thereupon cease: *Provided however,* That such licensee shall have the

same right of appeal or review as is provided by law in respect of other decrees and judgments of said court.

Section 314. After the effective date of this Act no person engaged directly, or indirectly through any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such person, or through an agent, or otherwise, in the business of transmitting and/or receiving for hire energy, communications, or signals by radio in accordance with the terms of the license issued under this Act, shall by purchase, lease, construction, or otherwise, directly or indirectly, acquire, own, control, or operate any cable or wire telegraph or telephone line or system between any place in any State, Territory, or possession of the United States or in the District of Columbia, and any place in any foreign country, or shall acquire, own, or control any part of the stock or other capital share or any interest in the physical property and/or other assets of any such cable, wire, telegraph, or telephone line or system, if in either case the purpose is and/or the effect thereof may be to substantially lessen competition or to restrain commerce between any place in any State, Territory, or possession of the United States, or in the District of Columbia, and any place in any foreign country, or unlawfully to create monopoly in any line of commerce; nor shall any person engaged directly, or indirectly through any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such person, or through an agent, or otherwise, in the business of transmitting and/or receiving for hire messages by any cable, wire, telegraph, or telephone line or system (a) between any place in any State, Territory, or possession of the United States, or in the District of Columbia, and any place in any other State, Territory, or possession of the United States; or (b) between any place in any State, Territory, or possession of the United States, or the District of Columbia, and any place in any foreign country, by purchase, lease,

construction, or otherwise, directly or indirectly acquire, own, control, or operate any station or the apparatus therein, or any system for transmitting and/or receiving radio communications or signals between any place in any State, Territory, or possession of the United States, or in the District of Columbia, and any place in any foreign country, or shall acquire, own, or control any part of the stock or other capital share or any interest in the physical property and/or other assets of any such radio station, apparatus, or system, if in either case the purpose is and/or the effect thereof may be to substantially lessen competition or to restrain commerce between any place in any State, Territory, or possession of the United States, or in the District of Columbia, and any place in any foreign country, or unlawfully to create monopoly in any line of commerce.

* * * * * *

Section 319. (a) No license shall be issued under the authority of this Act for the operation of any station the construction of which is begun or is continued after this Act takes effect, unless a permit for its construction has been granted by the Commission upon written application therefor. The Commission may grant such permit if public convenience, interest, or necessity will be served by the construction of the station. This application shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and the financial, technical, and other ability of the applicant to construct and operate the station, the ownership and location of the proposed station and of the station or stations with which it is proposed to communicate, the frequencies desired to be used, the hours of the day or other periods of time during which it is proposed to operate the station, the purpose for which the station is to be used, the type of transmitting apparatus to be used, the power to be used, the date upon which the station is expected to be completed and in operation, and such other information

as the Commission may require. Such application shall be signed by the applicant under oath or affirmation.

(b) Such permit for construction shall show specifically the earliest and latest dates between which the actual operation of such station is expected to begin, and shall provide that said permit will be automatically forfeited if the station is not ready for operation within the time specified or within such further time as the Commission may allow, unless prevented by causes not under the control of the grantee. The rights under any such permit shall not be assigned or otherwise transferred to any person without the approval of the Commission. A permit for construction shall not be required for Government stations, amateur stations, or stations upon mobile vessels, railroad rolling stock, or aircraft. Upon the completion of any station for the construction or continued construction of which a permit has been granted, and upon it being made to appear to the Commission that all the terms, conditions, and obligations set forth in the application and permit have been fully met, and that no cause or circumstance arising or first coming to the knowledge of the Commission since the granting of the permit would, in the judgment of the Commission, make the operation of such station against the public interest, the Commission shall issue a license to the lawful holder of said permit for the operation of said station. Said license shall conform generally to the terms of said permit.

* * * * * *

Section 326. Nothing in this Act shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication. No person within the jurisdiction of the United States shall utter any obscene,

indecent, or profane language by means of radio communication.

Title VI—Miscellaneous Provisions.

Section 602—

* * * * * *

(d) The first paragraph of section 11 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, is amended to read as follows:

"Sec. 11. That authority to enforce compliance with sections 2, 3, 7, and 8 of this Act by the persons respectively subject thereto is hereby vested: In the Interstate Commerce Commission where applicable to common carriers subject to the Interstate Commerce Act, as amended; in the Federal Communications Commission where applicable to common carriers engaged in wire or radio communication or radio transmission of energy; in the Federal Reserve Board where applicable to banks, banking associations, and trust companies; and in the Federal Trade Commission where applicable to all other character of commerce, to be exercised as follows:"

APPENDIX B.

Chronological History of the Order in Docket No. 5060

The Original Order

The Order was entered on May 2, 1941, and read as follows:

"BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C.

Commission Order In Docket No. 5060

IN THE MATTER OF THE INVESTIGATION OF CHAIN BROADCASTING

May 2, 1941

WHEREAS, the Commission on March 18, 1938, by Order No. 37, authorized an investigation 'to determine what special regulations applicable to radio stations engaged in chain or other broadcasting are required in the public interest, convenience, or necessity;'

WHEREAS, on April 6, 1938, the Commission appointed a Committee of three Commissioners to supervise the investigation, to hold hearings in connection therewith, and 'to make reports to the Commission with recommendations for action by the Commission;'

WHEREAS, the Committee held extensive hearings and on June 12, 1940, submitted its report to the Commission;

WHEREAS, briefs were filed and oral arguments had upon the Committee report and upon certain draft regulations issued for the purpose of giving scope and direction to the oral arguments; and

WHEREAS, the Commission, after due consideration, has prepared and adopted the Report on Chain Broadcasting to which this Order is attached;

NOW, THEREFORE, IT IS HEREBY ORDERED, That the following regulations be and they are hereby adopted:

3.101. No license shall be granted to a standard broadcast station having any contract, arrangement or understanding, express or implied, with a network organization[1] under which the station is prevented or hindered from, or penalized for, broadcasting the programs of any other network organization. See Chapter VII, A, 1.

3.102. No license shall be granted to a standard broadcast station having any contract, arrangement, or understanding, express or implied, with a network organization which prevents or hinders another station serving substantially the same area from broadcasting the network's programs not taken by the former station, or which prevents or hinders another station serving a substantially different area from broadcasting any program of the network organization. See Chapter VII, A, 2; and J.

3.103. No license shall be granted to a standard broadcast station having any contract, arrangement, or understanding, express or implied, with a network organization which provides, by original term, provisions for renewal, or otherwise, for the affiliation of the station with the network organization for a period longer than one year: *Provided*, That a contract, arrangement, or understanding for a one-year period, may be entered into within sixty days prior to the commencement of such one-year period. See Chapter VII, B.

3.104. No license shall be granted to a standard broadcast station having any contract, arrangement, or understanding, express or implied, with a network organization which prevents or hinders the station from scheduling programs before the network finally

[1] The term "network organization," as used herein, includes national and regional network organizations. See Chapter VII, J.

agrees to utilize the time during which such programs are scheduled, or which requires the station to clear time already scheduled when the network organization seeks to utilize the time. See Chapter VII, C.

3.105. No license shall be granted to a standard broadcast station having any contract, arrangement, or understanding, express or implied with a network organization which (a), with respect to programs offered pursuant to an affiliation contract, prevents or hinders the station rejecting or refusing network programs which the station reasonably believes to be unsatisfactory or unsuitable; or which (b), with respect to network programs so offered or already contracted for, prevents the station from rejecting or refusing any program which, in its opinion, is contrary to the public interest, or from substituting a program of outstanding local or national importance. See Chapter VII, D.

3.106. No license shall be granted to a network organization, or to any person directly or indirectly controlled by or under common control[2] with a network organization, for more than one standard broadcast station where one of the stations covers substantially the service area of the other station, or for any standard broadcast station in any locality where the existing standard broadcast stations are so few or of such unequal desirability (in terms of coverage, power, frequency, or other related matters) that competition would be substantially restrained by such licensing. See Chapter VII, E.

3.107. No license shall be issued to a standard broadcast station affiliated with a network organization which maintains more than one network: *Provided*, That this regulation shall not be applicable if such networks are not operated simultaneously, or if there is

[2] The word "control" as used herein, is not limited to full control but includes such a measure of control as would substantially affect the availability of the station to other networks.

no sustantial overlap in the territory served by the group of stations comprising each such network. See Chapter VII, F.

3.108. No license shall be granted to a standard broadcast station having any contract, arrangement, or understanding, express or implied, with a network organization under which the station is prevented or hindered from, or penalized for, fixing or altering its rates for the sale of broadcast time for other than the network's programs. See Chapter VII, G.

IT IS FURTHER ORDERED, That these regulations shall become effective immediately: *Provided,* That, with respect to existing contracts, arrangements, or understandings, or network organization station licenses, the effective date shall be deferred for 90 days from the date of this Order: *Provided further,* That the effective date of Regulation 3.106 may be extended from time to time with respect to any station in order to permit the orderly disposition of properties.

FEDERAL COMMUNICATIONS COMMISSION,

T. J. SLOWIE, *Secretary.*"

Postponement of ¶3.107

On June 13, 1941 the effective date of Regulation 3.107 was postponed by an order of the Commission reading as follows:

"FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C.

June 13, 1941.

ORDER

At a meeting of the Federal Communications Commission held at its offices in Washington, D. C. on the 13th day of June, 1941, the Commission having under consideration its order adopted May 2, 1941 in Docket

No. 5060 promulgating regulations applicable to radio stations engaged in chain broadcasting;

IT IS ORDERED, That the last paragraph of the said order of May 2, 1941, entered in Docket No. 5060, be and the same is hereby amended to read as follows:

'IT IS FURTHER ORDERED, That these regulations shall become effective immediately: *Provided,* That, with respect to existing contracts, arrangements, or understandings, or network organization station licenses, or the maintenance of more than one network by a single network organization, the effective date shall be deferred for 90 days from the date of this Order (May 2, 1941): *Provided further,* That the effective date of Regulation 3.106 with respect to any station and of Regulation 3.107 may be extended from time to time in order to permit the orderly disposition of properties.'

FEDERAL COMMUNICATIONS COMMISSION,

T. J. SLOWIE,

T. J. Slowie, Secretary."

Postponement to September 16, 1941

On July 22, 1941, the effective date for that part of the Order which was to have become effective on July 31, 1941 (i.e., 90 days after the date of the original Order) was changed to September 16, 1941 by another order of the Commission reading as follows:

"FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C.

July 22, 1941

ORDER

At a meeting of the Federal Communications Commission held at its offices in Washington, D. C. on the

22nd day of July, 1941, the Commission having under consideration the petitions of the National Broadcasting Company and of the Columbia Broadcasting System requesting that the Commission postpone the effective date of its order entered in Docket No. 5060 promulgating regulations applicable to radio stations engaged in chain broadcasting:

IT IS ORDERED, That the last paragraph of the said order of May 2, 1941, entered in Docket No. 5060, BE, AND THE SAME IS HEREBY, AMENDED to read as follows:

'IT IS FURTHER ORDERED, That these regulations shall become effective immediately: *Provided*, That, with respect to existing contracts, arrangements, or understandings, or network organization station licenses or the maintenance of more than one network by a single network organization, the effective date shall be deferred until September 16, 1941; *Provided further*, That the effective date of Regulation 3.106 with respect to any station and of Regulation 3.107 may be extended from time to time in order to permit the orderly disposition of properties.'

FEDERAL COMMUNICATIONS COMMISSION

WM. P. MASSING

Wm. P. Massing
Acting Secretary"

Postponement to Indeterminate Time After September 12, 1941

On August 28, 1941, the effective date for that part of the Order which was to have become effective on September 16, 1941 was changed by the following public notice to an indeterminate time to be fixed by the Commission on or after September 12, 1941:

"FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C.

PUBLIC NOTICE
August 28, 1941.

MODIFICATION OF CHAIN BROADCASTING RULES SET FOR ARGUMENT

On August 14, 1941, Mutual Broadcasting System, Inc. filed with the Commission a petition requesting it to amend its regulations dealing with network option time and the term of affiliation contracts. This petition has been set for oral argument before the Commission en banc on Friday, September 12, 1941 at 10 A. M. at a place hereafter to be announced. At that time the Commission will hear oral argument by Mutual Broadcasting System, Inc., and by any other licensees and network organizations who desire to be heard with respect to the chain broadcasting regulations as promulgated, the Mutual petition or any other modification of any of the chain broadcasting regulations which those appearing desire to propose. All persons wishing to be heard are requested to file appearances with the Secretary of the Commission on or before September 10th. Written briefs may be filed on or before September 12th.

The Chain broadcasting regulations will not be placed in effect with respect to existing affiliation contracts, or network organization station licenses, or the maintenance of more than one network by a single network organization, until after the disposition of the Mutual petition and of any other which may be filed."

Amendment of Order; Postponement to November 15, 1941

On October 11, 1941 (after a rehearing on September 12, 1941), the Order was amended as follows:

"FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C.

October 11, 1941

ORDER

At a meeting of the Federal Communications Commission held at its offices in Washington, D. C. on the 11th day of October, 1941,

The Commission having under consideration the petition of the Mutual Broadcasting System, filed August 14, 1941, requesting that the Commission amend its order entered in Docket No. 5060 promulgating regulations applicable to radio stations engaged in chain broadcasting by modifying the regulations dealing with option time and the duration of affiliation contracts, having heard oral argument on said petition and having reconsidered its report and order in Docket No. 5060,

IT IS ORDERED, That the Commission's order of May 2, 1941, entered in Docket No. 5060, BE, AND THE SAME IS HEREBY, AMENDED in the following particulars:

Sections 3.102, 3.103 and 3.104 of the Regulations set forth in said order are hereby amended to read as follows:

Section 3.102. No license shall be granted to a standard broadcast station having any contract, arrangement, or understanding, express or implied, with a network organization which prevents or hinders another station serving substantially the same area from broadcasting the network's programs not taken by the former station, or which prevents or hinders another station serving a substantially different area from broadcasting any program of the network organiza-

tion. This regulation shall not be construed to prohibit any contract, arrangement, or understanding between a station and a network organization pursuant to which the station is granted the first call in its primary service area upon the programs of the network organization.

Section 3.103. No license shall be granted to a standard broadcast station having any contract, arrangement, or understanding, express or implied, with a network organization which provides, by original term, provisions for renewal, or otherwise for the affiliation of the station with the network organization for a period longer than two years: *Provided*, That a contract, arrangement, or understanding for a period up to two years, may be entered into within 120 days prior to the commencement of such period.

Section 3.104. No license shall be granted to a standard broadcast station which options[1] for network programs any time subject to call on less than 56 days' notice, or more time than a total of three hours[2] within each of four segments of the broadcast day, as herein described. The broadcast day is divided into 4 segments, as follows: 8 a.m. to 1 p.m.; 1 p.m. to 6 p.m.; 6 p.m. to 11 p.m.; 11 p.m. to 8 a.m.[3] Such options may

[1] As used in this section, an option is any contract, agreement, or understanding, express or implied, between a station and a network organization which prevents or hinders the station from scheduling programs before the network agrees to utilize the time during which such programs are scheduled, or which requires the station to clear time already scheduled when the network organization seeks to utilize the time.

[2] All time options permitted under this section must be for specified clock hours, expressed in terms of any time system set forth in the contract agreed upon by the station and network organization. Shifts from daylight saving to standard time or vice versa may or may not shift the specified hours correspondingly as agreed by the station and network organization.

[3] These segments are to be determined for each station in terms of local time at the location of the station but may remain constant throughout the year regardless of shifts from standard to daylight saving time or vice versa.

not be exclusive as against other network organizations and may not prevent or hinder the station from optioning or selling any or all of the time covered by the option, or other time, to other network organizations.

The last paragraph of said order is hereby amended to read as follows:

"IT IS FURTHER ORDERED, That these regulations shall become effective immediately: *Provided*, That, with respect to existing contracts, arrangements or understandings, or network organization station licenses, the effective date shall be deferred until November 15, 1941; *Provided further*, That the effective date of Regulation 3.106 with respect to any station may be extended from time to time in order to permit the orderly disposition of properties; and *Provided further*, That the effective date of Regulation 3.107 shall be suspended indefinitely and any further order of the Commission placing said Regulation 3.107 in effect shall provide for not less than six months' notice and for further extension of the effective date from time to time in order to permit the orderly disposition of properties.

T. J. SLOWIE,
Secretary."

The "Minute" of October 31, 1941

On October 31, 1941, after the present action had been instituted, the Commission entered the following minute which operated further to suspend Regulation 3.106:

"Procedure in Docket No. 5060.

The Commission today adopted the following minute setting forth the procedure that it will follow in applying the policies announced in the Chain Broadcasting Regulations:

If a station wishes to contest the validity of the Chain Broadcasting Regulations adopted in Docket No. 5060,

or the reasonableness of their application to the particular station, its license will be set for hearing. In order to insure that the station may remain on the air and be in no way injured by any such Commission proceeding and appeal to court from a decision in such proceeding, the Commission will grant such licensee a temporary extension of its license, with renewals from time to time until there has been a final determination of the issues raised at such hearing. In the event of such litigation, and if the validity of the application of the Chain Broadcasting Regulations to such licensee is sustained by the courts, the Commission will nevertheless grant a regular license to the licensee, otherwise entitled thereto, who has unsuccessfully litigated that issue, if the licensee thereupon conforms to the decision.

The supplementary decision and order in Docket No. 5060 indefinitely suspended Regulation 3.107, relating to the operation of more than one network by a single network organization. No similar suspension was made of that portion of Regulation 3.106, relating to network operation of more than one standard broadcast station with substantially overlapping service areas. The Commission will postpone indefinitely any action to prevent such dual station operation if it is shown that the operation of two stations in any city is indispensable to the continued operation of two networks by a single network organization.

The adoption of the foregoing procedure is without prejudice to the rights of any person who may petition the Commission for modification or stay of the Chain Broadcasting Regulations."

Stipulation of November 12, 1941

On November 12, 1941, the parties to the present action entered into the following stipulation:

"Stipulation

It is hereby stipulated by and between all the parties by their respective counsel:

1. That counsel for all parties will cooperate to bring on for hearing on or before December 15, 1941, the Motion for Preliminary Injunction heretofore filed by plaintiffs and the defendants' Motion to Dismiss the Complaint or, in the alternative, for Summary Judgment.

2. Pending such hearing by this Court and the determination by it of plaintiffs' said Motion for Preliminary Injunction, the defendant Federal Communications Commission is suspending, and will take no steps for enforcement or applications of, the Commission's Order of May 2, 1941, in Docket No. 5060, as last amended October 11, 1941, with respect to any failure by any radio station to comply with such Order.

3. Any party hereto may move before the Court to modify the terms of this stipulation to the same extent which such party would be entitled to had this stipulation been in the form of a temporary restraining order issued after hearing.

UNITED STATES OF AMERICA
By Samuel Brodsky,
Special Assistant to the Attorney General.

FEDERAL COMMUNICATIONS COMMISSION
By Telford Taylor
Telford Taylor,
General Counsel.

Thomas E. Harris
Thomas E. Harris,
Assistant General Counsel.

NATIONAL BROADCASTING COMPANY, INC.
By Wright, Gordon, Zachry,
Parlin & Cahill,
by John T. Cahill.

WOODMEN OF THE WORLD LIFE
INSURANCE SOCIETY
By Thomson, Wood & Hoffman, Attys.
John B. Dawson.

STROMBERG CARLSON TELEPHONE
MANUFACTURING COMPANY

By Hill, Rivkins & Middleton
By Thomas H. Middleton

SO ORDERED: 11/12/41

Learned Hand
U. S. C. J.

John Bright
U. S. D. J.

Henry W. Goddard
U. S. D. J."

Restraining Order of March 2, 1942

On March 2, 1942, the District Court entered the following decree:

"DECREE GRANTING TEMPORARY RESTRAINING ORDER

This cause came on to be further heard at the February, 1942, term of this Court and was argued by counsel and thereupon, upon consideration thereof, it appearing that the relief herein granted is necessary to preserve the status quo pending an appeal by the plaintiffs to the Supreme Court, for the reasons appearing in the Opinion, and Findings of Fact and Conclusion of Law, filed herewith, it is

Ordered, Adjudged and Decreed that until May first, 1942 or the argument of the appeal herein to the Supreme Court of the United States, whichever is earlier, the Federal Communications Commission be and the same hereby is restrained from enforcing those regulations which were issued in their amended form on October 11, 1942, and which are known as 'Order in Docket No. 5060.'

Learned Hand, U. S. C. J.; Henry W. Goddard, U. S. D. J.; John Bright, U. S. D. J."

Stipulation of April 24, 1942

On April 24, 1942, the parties to this action entered into the following stipulation:

"IT IS HEREBY STIPULATED by and between all the parties by their respective counsel that:

Until the last decision day of the October, 1941, term of the Supreme Court of the United States or until the determination of the pending appeal in the above entitled case by said Court, whichever is earlier, the defendant-appellee Federal Communications Commission is suspending, and will take no steps for enforcement or application of, the Commission's Order of May 2, 1941, in Docket No. 5060, as last amended October 11, 1941, with respect to any failure by any radio station to comply with such order.

Dated, April 24, 1942.

CHARLES FAHY
Solicitor General of the United States of America.

TELFORD TAYLOR
General Counsel for Federal Communications Commission.

JOHN T. CAHILL
Solicitor for National Broadcasting Company, Inc.

DAVID M. WOOD
Solicitor for Woodmen of the World Life Insurance Society.

THOMAS H. MIDDLETON
Solicitor for Stromberg-Carlson Telephone Manufacturing Company.

LOUIS G. CALDWELL
Solicitor for Mutual Broadcasting System, Inc."

Opinion of this Court on Stay

On June 1, 1942, this Court handed down its opinion reversing the dismissal of the complaint by the District Court. The opinion in the Columbia Broadcasting System case contained the following statement:

"The stay now in effect will be continued, on terms to be settled by the court below."

And the opinion in the National Broadcasting Company case contained the following sentence:

"As in the *Columbia* case the stay now in effect will be continued on terms to be settled by the court below."

Restraining Order of November 16, 1942.

On November 16, 1942, the District Court entered the following decree:

"DECREE GRANTING TEMPORARY RESTRAINING ORDER.

This cause came on to be further heard at the October, 1942, term of this court and was argued by counsel and thereupon, upon consideration thereof, it appearing that the relief herein granted is necessary to preserve the *status quo* pending an appeal by the plaintiffs to the Supreme Court, for the reasons appearing in the Findings of Fact filed herewith, it is

ORDERED, ADJUDGED AND DECREED that until February 1, 1943, or the argument of the appeal herein in the Supreme Court of the United States, whichever is earlier, the Federal Communications Commission be and the same hereby is restrained from enforcing those regulations which were issued in their amended form on October 11, 1941, and which are known as 'Order in Docket No. 5060.'

LEARNED HAND,
U. S. C. J.

HENRY W. GODDARD,
U. S. D. J.

JOHN BRIGHT,
U. S. D. J."

APPENDIX C.

Complaint in Pending Anti-Trust Suit in Chicago Against NBC.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION.

UNITED STATES OF AMERICA,

v.

RADIO CORPORATION OF AMERICA, NATIONAL BROADCASTING COMPANY, DAVID SARNOFF, NILES TRAMMELL, WILLIAM S. HEDGES, MARK G. WOODS, and GEORGE ENGLES.

COMPLAINT.

The United States of America, by J. Albert Woll, its attorney for the Northern District of Illinois, Thurman Arnold, Assistant Attorney General, and Daniel B. Britt and Victor O. Waters, Special Assistants to the Attorney General, acting under the direction of the Attorney General, files this complaint against the following named defendants and complains and alleges upon information and belief as follows:

I.

Defendants.

1. That the Radio Corporation of America, hereinafter referred to as RCA, a corporation organized and duly authorized to do business under the laws of the State of

Delaware, is made a defendant herein; that RCA is engaged directly and through its subsidiary companies in virtually all phases of the radio industry and many allied businesses, including the manufacture of radios and radio apparatus, electrical transcriptions, the management of talent, the granting of licenses under numerous patents owned and controlled by it, the operation of point to point radio communications, and the operation of two national radio network systems;

2. That the National Broadcasting Company, hereinafter referred to as NBC, a corporation organized and duly authorized to do business under the laws of the State of Delaware, is made a defendant herein; that NBC is a wholly owned and controlled subsidiary of RCA; that defendant RCA conducts its radio broadcasting, electrical transcription, and management of talent businesses through defendant NBC;

3. That the following individuals, officers or directors of the corporate defendants are named as defendants herein; that they have, during the period covered by this complaint, actively engaged in the management, direction and control of the affairs and policies of the corporate defendants and in particular those affairs and policies which are covered by this Complaint, and have authorized, ordered and done the acts of the defendants constituting the offenses hereinafter charged:

David Sarnoff, Chairman of the Board of Directors of NBC; President and member of the Board of Directors of RCA;
Niles Trammell, President and member of the Board of Directors of NBC;
William S. Hedges, Vice President of NBC;
Mark G. Woods, Vice President of NBC;
George Engles, Vice President of NBC.

II.

Description of the Radio Broadcasting Industry.

4. That a radio network system consists of two or more stations which broadcast the same program simultaneously, the program being transmitted to the stations comprising the network either from the station originating the program or from some other source over telephone wires usually leased from the American Telephone and Telegraph Company; that stations comprising a network are often referred to as "affiliated" with a network and their relations with the network are usually covered by the terms of so-called "affiliation contracts" entered into separately by each of the stations with the network company; that a broadcasting station may be affiliated with more than one network, and regardless of that affiliation may carry programs of other networks on a temporary or permanent basis by means of a wire line with such other network; that a network operation may be national or regional in scope; that at the time of the filing of this complaint there are in operation four national network systems in the United States; that two of said networks are operated by NBC, one by the Mutual Broadcasting System, hereinafter referred to as MBS, and one by the Columbia Broadcasting System, hereinafter referred to as CBS;

5. That programs transmitted by the networks to their affiliated stations are of two types namely "sustaining" or "commercial"; that "sustaining" programs are programs which are not sponsored or paid for by an advertiser, and include, among others, programs transmitted by the networks as a public service; that "commercial" programs are those which are sponsored and paid for, usually by an advertiser; that a broadcasting station affiliated with a national network is permitted to broadcast all of the network's "sustaining" programs; that such station may broadcast a "commercial" program carried by the network only upon the consent of the sponsor or advertiser; that

while a station affiliated with a network receives no revenue for broadcasting "sustaining" programs it is required to compensate the network whenever "sustaining" programs are carried where affiliation is with NBC or CBS; that stations affiliated with networks receive compensation only when they carry "commercial" programs;

6. That the nature of the radio spectrum is such that the number of broadcasting stations which can operate, the power they can utilize, the number and character of broadcasting stations available for participation in network broadcasting, and the facilities available for licensing are limited;

7. That an advertiser using the facilities of a nation-wide radio network is interested in securing the widest possible circulation and greatest number of listeners; that the circulation of an individual station participating in a network program depends on its geographic location, the power under which the station is authorized to operate, the frequency assigned to it, and its hours of operation; that the power employed by a broadcasting station determines the strength of its signal and affects the scope of the area it can serve; that the lower the frequency assigned the farther the station's signal will carry and the larger the area served;

8. That there are more than 800 commercial radio broadcasting stations in the United States which are operated under the authority of the Federal Communications Commission (hereinafter referred to as the FCC) pursuant to the Act of Congress known as the Communications Act of 1934, approved June 19, 1934, and prior acts of Congress; that in many cities and towns of the United States there are less than four broadcasting stations having comparable facilities; that in such cities and towns it is impossible for the four existing networks or for potential networks to secure affiliated station outlets where such available stations are controlled exclusively by existing

networks; that 105 cities and towns in the United States, each having a population in excess of 50,000, have three or less full-time commercial stations in each (list attached hereto as Exhibit A and made a part hereof);

9. That radio advertisers in whose behalf commercial radio programs are produced are of three types, namely, national advertisers using national network facilities, national advertisers using electrical transcriptions, and local advertisers sponsoring programs over local stations either through the medium of performance by live talent or through the reproduction of programs recorded upon electrical transcriptions; that a national advertiser may contract for the use of a station's time either by entering into contractual arrangements with the network with which the station is affiliated or by contracting directly with the several stations affiliated with the network; that the program of the national advertiser, using network facilities, must be produced through the performance of live talent present in the studio of the station originating the network broadcast; that the program of a national advertiser who does not use network facilities is usually produced by the reproduction of programs recorded upon electrical transcriptions; that electrical transcriptions are mechanical devices upon which programs are recorded or mechanically reproduced for the exclusive use of radio broadcasting stations;

III.

Position of Defendants in the Radio Broadcasting Industry.

10. That defendant RCA conducts its broadcasting business through defendant NBC; that NBC operates two nationwide broadcasting networks, known as the "Red" and the "Blue"; that both the "Red" and the "Blue" networks are composed of radio stations which form the "basic" network and others which are known as "supplemental" affiliates; that the basic "Red" network is composed of

23 stations either licensed to or affiliated with NBC and its key station is station WEAF, owned by NBC and located within the city and State of New York; that the "Blue" network is composed of 24 stations, either licensed to or affiliated with NBC, with its key station, WJZ, owned by NBC, and also located within the city and State of New York; that in addition there are more than 100 stations affiliated with NBC, which are not assigned to either basic network and which are supplemental to either the "Red" or the "Blue" network and are available to either of such networks at the option of the advertiser; that the affiliation contracts do not specify to which of the two networks any station is to be assigned; that NBC reserves the right to move any station from one network to the other even though affiliation with the "Red" network has proved much more remunerative to a station than affiliation with the "Blue" network;

11. That of 52 existing clear channel radio stations in the United States NBC owns, controls or has affiliated with it 32, and CBS 18; that most of the full-time regional stations are likewise affiliated with either NBC or CBS; that excluding low-powered local stations, more than half of all the stations in the country are affiliated with NBC and CBS; that of the 92 cities in the United States with more than 100,000 population, less than 63 have three or more full-time stations and less than 37 have four or more full-time stations; that there are more than 45 cities in the United States with a population in excess of 50,000 *served by* NBC or CBS or both, in which no other network can procure an independent full-time broadcasting station outlet because of the control exerted by NBC and CBS; that in over 20 cities of the United States, including Cleveland, Indianapolis, Houston, Birmingham, Providence, Des Moines, Albany, Charlotte and Harrisburg, other networks can procure only limited access to the existing radio broadcasting facilities;

12. That NBC is the direct operator and licensee under licenses issued by the FCC, of the following broadcasting stations having the call letters, power, and location as set out below:

Call Letters	Location	Power
WEAF	New York	50,000 Watts
WJZ	New York	50,000 "
WRC	Washington	5,000 "
WMAL	Washington	5,000 "
WTAM	Cleveland	50,000 "
WMAQ	Chicago	50,000 "
WENR	Chicago	50,000 "
KOA	Denver	50,000 "
KPO	San Francisco	50,000 "
KGO	San Francisco	7,500 "

13. That for the years 1938, 1939 and 1940, the net time sales for the entire radio industry were $117,379,459, $129,968,026, and $154,823,787, respectively, as compared with $35,611,145, $37,747,543, and $41,683,341 for NBC; $25,450,351, $30,961,499, and $35,630,063 for CBS; and $2,272,662, $2,610,969 and $3,600,161 for MBS;

14. That the power and dominant position of NBC and CBS are further shown by comparing the net operating income for the entire broadcasting industry with that of NBC and CBS; that for the years 1938, 1939 and 1940, the net operating income for the entire broadcasting industry was $18,854,784, $23,837,944, and $33,296,708, respectively, as compared with $4,137,503, $4,103,909, and $5,834,772 for NBC; and $4,329,510, $6,128,686, and $7,431,634 for CBS;

15. That the relative positions of NBC and CBS in the radio industry are apparent from the fact that in each of the years mentioned NBC and CBS have each enjoyed net profits in excess of the gross revenues of their only competitor in national network operations;

16. That broadcasting stations affiliated with NBC have in excess of 50% of the total combined night-time power of all stations in the United States; that stations affiliated with NBC and CBS have over 85% of the combined night-time power; that by reason of the dominant position in the industry of NBC and CBS, and because of the large volume of business controlled by them and the many advantages afforded radio stations through affiliation with them, a network affiliation or a continued network affiliation with either NBC or CBS is desired by practically all commercial radio broadcasting stations; that NBC and CBS have exercised the power inherent in their dominant position by imposing upon their respective affiliated broadcasting stations certain identical tying clauses which have prevented such stations from dealing with other competing network systems and have prevented NBC and CBS from dealing with radio stations other than their regular network affiliated stations; that both NBC and CBS have optioned all, or a part, of their respective affiliated stations' time on the air, a substantial portion of which is never used by either network; that CBS as well as NBC, has entered into contracts of several years duration with each of its affiliated stations, and is the owner, operator and licensee of radio stations located in lucrative marketing areas;

IV.

Jurisdiction and Venue.

17. That this Complaint is filed and the jurisdiction of this Court invoked to obtain equitable relief against defendants Radio Corporation of America, National Broadcasting Company, and certain of the officers and members of the Boards of Directors thereof, because of their violations, jointly and severally, as hereinafter alleged, of Sections 1 and 2 of the Sherman Act;

18. That the unlawful combination and conspiracy hereinafter described to restrain commerce among the several

states of the United States has been carried on in part within the Northern District of Illinois, Eastern Division, and many of the unlawful acts pursuant thereto have been performed by defendants and their representatives in said District; that the interstate commerce in radio broadcasting, electrical transcriptions and talent, as hereinafter described, is carried on in part within said District; that both said corporate defendants have usual places of business in said District and there transact business and are within the jurisdiction of this Court for the purpose of service;

V.

Interstate Commerce.

a. Radio Broadcasting.

19. That radio broadcasting stations, including network broadcasting systems in the United States, are engaged in commerce among the several states of the United States, the District of Columbia and within the Northern District of Illinois, Eastern Division; that each station is an instrumentality through which energy, ideas and entertainment are transmitted across state or national boundaries to radio listeners in the United States, the District of Columbia, and foreign countries;

b. Electrical Transcriptions.

20. That more than 50% of the electrical transcriptions produced in the United States for the exclusive use of radio broadcasting is produced or manufactured in the States of New York and California and shipped to radio broadcasting stations located throughout the United States, the District of Columbia and within the Northern District of Illinois, Eastern Division; that a substantial portion of the time devoted to radio broadcasting by the radio broadcasting stations is consumed by the broadcasting of intelligence, entertainment and information recorded upon electrical transcriptions;

c. Talent.

21. That a substantial portion of radio stations' time on the air, including that of networks, is devoted to the broadcasting of performances by artistic talent, including musicians, virtuosi, speakers, comedians, announcers, news commentators and actors; that the radio broadcasting of talent by radio broadcasting stations and network systems is effected through performances at the studios of particular broadcasting stations or at places in close proximity thereto and transmitted across state or national boundaries through the medium of radio signals and telephone wires for rebroadcasting purposes;

22. That the creation of a public demand for the services of any individual possessing any form of talent requires some medium of public expression; that radio broadcasting is one of the principal mediums through which talent is brought to the attention of the public and a demand for such talent created thereby;

VI.

The Combination and Conspiracy.

23. That the defendants named herein together with affiliated broadcasting stations, each well knowing the matters and things hereinbefore alleged, for many years preceding the filing of this Complaint and continuing to the date of the filing hereof, have been engaged in the United States, and within the Northern District of Illinois, Eastern Division, in a wrongful and unlawful combination and conspiracy in restraint of the aforesaid interstate commerce and in a wrongful and unlawful combination and conspiracy to attempt to monopolize the aforesaid interstate commerce in radio broadcasting, electrical transcriptions and talent, in violation of Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies" (15 U. S. C. A. 1 and 2), and have conspired

to do all acts and things and to use all means necessary and appropriate to make said restraints and attempts to monopolize effective, including the means, acts and things hereinafter more particularly alleged;

24. That one of the purposes of the conspiracy was to procure, monopolize, and keep within the control of the defendants herein, to the greatest extent possible and to the exclusion of other persons and corporations, the business of conducting national radio network operations and to suppress competition in all phases of such operations, including competition in securing national radio advertisers; that as a part of said combination and conspiracy the defendants have arranged and agreed among themselves to do and have done the following things:

(a) To require radio stations affiliated with NBC to execute affiliation contracts containing clauses which by their terms have forbidden said broadcasting stations from accepting any programs from any other national network (a copy of such contract clause is attached hereto as "Exhibit B", and made a part hereof);

(b) To refuse to furnish NBC network programs to radio stations not regularly affiliated with NBC, even though the regularly affiliated station covering substantially the same area is not broadcasting such programs, thereby preventing many radio listeners from hearing and enjoying NBC network programs that would otherwise be available;

(c) To require radio stations affiliated with NBC to execute affiliation contracts containing so-called option time clauses. These clauses usually provide that upon 28 days' notice the network may exercise the option to use any part of specified hours of the affiliated stations' time on the air as the network may desire. The specified hours optioned by NBC usually include substantially all of the more desirable broadcasting time of the affiliated stations. A typical option time clause is attached hereto marked "Exhibit C", and made a part hereof;

(d) To suppress competition among radio networks in the sale to advertisers of time on the air by optioning all of the more desirable time of affiliated stations, which options may be exercised upon 28 days' notice. The value of a program to a radio advertiser depends largely on its continuation for such period of time as to familiarize the listening public with the program, the local station over which it is broadcast, and the time of the broadcast. The necessary effect, therefore, of such option time contracts has been to prevent any other network from competing with NBC in the furnishing of network programs, or in arranging network broadcasts on behalf of network advertisers to such stations during the stations' more desirable time on the air optioned to NBC, even though substantial portions of the affiliated stations' time optioned to NBC has not been purchased by NBC for the broadcasting of commercial programs;

(e) To suppress competition between NBC and its affiliated radio stations in securing commercial radio advertisers through NBC's practice of optioning a substantial part of its affiliated stations' more desirable time on the air, thereby vesting in NBC rather than in the affiliated stations the power to make satisfactory commitments with radio advertisers as to the desired portion of the affiliated stations' time;

(f) To prevent affiliated stations from entering into any commitments with local radio sponsors or advertisers for the more desirable hours for periods longer than 28 days, even though NBC does not exercise its option to use such time;

(g) To suppress competition between NBC and electrical transcription manufacturers in securing commercial radio advertisers for stations affiliated with NBC through exercise by NBC of its option on the affiliated stations' time on the air in such manner as to prevent electrical transcription manufacturers or advertisers desiring to use electrical transcriptions for broadcasting purposes

from securing satisfactory commitments as to desire radio time and as to geographic distribution directly with the radio stations affiliated with NBC;

(h) To suppress competition with other network systems in securing network station outlets by requiring affiliated stations to execute long term contracts. The FCC issues licenses for station operation for periods not longer than two years. The affiliation contracts between NBC and its affiliated stations are for periods of five years or more. The stations affiliated with NBC have been forced to sign these long term contracts because of the dominant position in the broadcasting industry enjoyed by NBC, and because CBS, its chief competitor, forces its affilated stations to sign similar long term contracts;

(i) To suppress the development of existing and potential radio network systems by entering into the aforesaid "tying" affiliation contracts with stations located in substantially all of the more lucrative marketing areas where the number of radio broadcasting stations available for network systems is limited, well knowing that their major competitor, CBS, is pursuing a similar policy;

(j) To acquire complete ownership and control of radio stations located in certain cities and towns in which the number of broadcasting stations having comparable radio facilities is insufficient to permit other national network operations to use exclusively the facilities of one of such stations;

(k) To fix the price to be charged radio advertisers and advertising agencies for the sale of their affiliated stations' time on the air;

(l) To make station outlets unavailable to other networks and to suppress the development of additional national network systems by operating two of the four existing national network systems, thereby monopolizing

many of the limited number of radio stations available for network systems;

(m) To operate two of the four existing national network systems in a noncompetitive manner under the joint ownership, control and management of defendants;

(n) To refuse to designate in the contracts of affiliation with radio stations whether said stations will be affiliated with the "Red" or the "Blue" networks of NBC; to discriminate against the operations of the "Blue" and the stations receiving programs therefrom by routing to the greatest extent possible all commercial programs over the facilities of the NBC "Red", thereby making the operations of the "Red" and an affiliation therewith far more lucrative than the operations of the "Blue" and an affiliation therewith, and vesting in the defendants the power to shift a station from the far more remunerative "Red" to the far less remunerative "Blue" or vice versa at any time, regardless of the station's wishes;

(o) To use the power to shift an affiliated station from the far more remunerative "Red" to the less remunerative "Blue" as a threat against affiliated stations not operating according to the wishes of the defendants;

(p) To suppress competition between defendants and the other two national networks in the sale of time to radio advertisers and advertising agencies through the operation of two network systems by so manipulating the two networks as: To allow discounts to advertisers based upon the amount of business such advertisers do over both networks of NBC, thereby giving the "Blue", for example, a marked advantage over the other networks in securing the business of a national advertiser who is already sponsoring a program over the facilities of the "Red"; to allow NBC to arrange certain of its most attractive facilities into one combination in the event an advertiser cannot otherwise be satisfied; and to allow NBC an advantage over other networks in terms of pro-

gramming since NBC has approximately twice as many hours at its disposal as either of the other two national networks;

(q) To utilize the "Blue" to forestall competition between the "Red" and other networks in securing network outlets by tying up two of the best radio stations in lucrative markets through the ownership of stations, or through long term contracts containing exclusive and optioned time provisions;

(r) To refuse to allow electrical transcription manufacturers to connect with radio studios for recording purposes other than the studios of the station originating the network program even though the advertiser in whose behalf the program is being broadcast desires and has contracted for the services of the electrical transcription manufacturers;

(s) To enter into management contracts, either directly or through affiliated companies, with many artists, including a substantial number of the best known and most popular broadcasting artists in the United States. Such contracts usually provide that the managing company shall have the exclusive right to determine the use to be made of the services of such artists, and that the managing company shall receive a specified percentage of the revenue paid for the artists' services from any and all sources, including services not related to radio broadcasting. The artists have submitted to the terms of such management contracts and have refused to contract with so-called independent concert or artist management agencies because of defendants' power to popularize talent through performance over radio networks to a degree not enjoyed by any other management services;

(t) To utilize the power of popularization of talent through performance over radio to the detriment of talent not under their control and of other talent management services, through performance of their exclusively man-

aged and controlled talent over the two networks operated by defendants to the greatest extent possible, and by insisting that the advertisers and advertising agencies using time on defendants' networks likewise use the services of talent under contract to defendants;

(u) To engage in the manufacture and sale of electrical transcriptions to affiliated stations over which they have acquired power of control in competition with others who are similarly engaged in the manufacture and sale of electrical transcriptions to said stations."

VII.

Effect of Conspiracy.

25. That the defendants have adopted the means and engaged in the activities aforesaid, with the intent, purpose, and effect of unreasonably and unlawfully suppressing competition in the conduct and development of national radio network systems, and have otherwise unreasonably restrained and attempted to monopolize interstate commerce in radio broadcasting, electrical transcriptions and talent; that their activities aforesaid have prevented unknown thousands of radio listeners from hearing and enjoying radio network programs that otherwise would have been available and have affected the quality of radio network programs which could be expected to flow from a competitive radio broadcasting industry;

26. That there are unknown thousands of individuals in the United States possessing talent of a unique nature many of whom would no doubt rise to national prominence if given an equal opportunity for popularization over the radio; that the number and importance of talent management services existing in the United States are gradually diminishing because of the competitive advantages in the talent management field enjoyed by defendants through the joint operation of talent management services and radio network systems;

27. That the radio stations affiliated with defendants in the operation of national networks have substantial investments of money, credits and property in their businesses and said investments and businesses would be greatly reduced in value or destroyed if defendants, because of their dominant position in the industry, refused to allow such stations to continue a network affiliation;

28. That the ownership by defendants of an electrical transcription company constitutes in itself an unreasonable restraint of trade insofar as their affiliates are concerned because defendants control a substantial portion of the limited radio facilities of the nation, and effectively control substantially all the operations of their affiliated stations.

29. That the power of defendants, the competitive advantages enjoyed by them, the unreasonable restraints of interstate commerce inherent in the ownership and operation of two national network systems and of radio stations located in cities and towns in which there are less than four radio stations with comparable facilities, the ownership of an electrical transcription company, and the ownership of a talent management service, are such that they are subject to abuses which can be corrected only by a severance of these ownerships and controls.

VIII.

Prayer.

Wherefore, the complainant prays:

1. That summons issue to each of the defendants, commanding said defendants to appear herein and to answer the allegations contained in this complaint and to abide by and perform such orders and decrees as the Court may make in the premises;

2. That upon final hearing of this cause, the Court order, adjudge and decree that the conspiracy and wrongs herein described exist and constitute an unreasonable restraint of trade and commerce among the various states and the District of Columbia;

3. That the defendants be required to elect which of the two national networks, the "Red" or the "Blue", they desire to continue to operate, and that a receiver be appointed to receive forthwith any stock and share capital owned by Radio Corporation of America, National Broadcasting Company, any subsidiary company or any officer thereof, which represents the ownership of the network which defendants elect not to operate, including any stock of defendants representing the ownership of radio stations located in cities and towns in which there are less than four radio stations with comparable facilities, including electrical transcription and talent management operations, and that defendants be thereupon ordered forthwith to transfer the aforesaid stock and share capital to the aforesaid receiver; that the aforesaid receiver upon receiving the aforesaid stock and share capital offer such operations for sale and sell the same, holding the proceeds subject to the order of the Court; that in the event there is no stock and share capital of a severable nature representing ownership of the above named operations, the Court require defendants to sever their ownership, operation and control of the above named properties in such manner and form as the Court shall deem just and proper;

4. That the defendants and each and all of their respective officers, managers, agents, employees, and all persons acting or claiming to act on behalf of defendants be enjoined and restrained from entering into any contract, agreement, conspiracy, or otherwise to do the following acts and things:

(a) To exercise any right or power to prevent affiliated radio stations from accepting any program from any other network during such stations' time on the air which is not being used by defendants;

(b) To refuse to furnish NBC network programs to radio stations covering substantially the same area as the regularly affiliated stations in a nondiscriminatory

manner, when the regularly affiliated station does not broadcast such programs;

(c) To prevent or hinder the affiliated stations from scheduling programs before the defendants finally agree to use the time during which such programs are scheduled, or from requiring the station to clear time already scheduled for use, either through the medium of live talent or electrical transcriptions, when the defendants seek to use the time;

(d) To enter into or assert any contract of affiliation with any radio station for a period longer than two years;

(e) To prevent or hinder their affiliated stations from fixing the price at which said stations shall respectively sell or offer for sale time on the air, free from any influence or pressure exerted by defendants;

(f) To refuse to allow electrical transcription manufacturers reasonable access to radio studios, including the studios of the stations not originating the network program, for recording purposes when desired by the advertiser in whose behalf the program is being broadcast;

5. That the complainant recover the costs and disbursements of this suit;

6. That the complainant shall have such other and further relief as the Court shall deem just and proper.

DANIEL B. BRITT,
VICTOR O. WATER,
Special Assistants to the Attorney General.

FRANCIS BIDDLE,
Attorney General

THURMAN ARNOLD,
Assistant Attorney General

J. ALBERT WOLL,
United States Attorney

Exhibit A

Summary of Metropolitan Districts in the United States Having a Population in Excess of 50,000, Having Three or Less Full-Time Commercial Stations and Showing the Population and Total Number of Full-Time Commercial Stations in Each.

THREE FULL-TIME COMMERCIAL STATIONS

Metropolitan District	Population	Total Number of Full-time Commercial Stations
Cleveland, O.	1,214,943	3
Milwaukee, Wis.	790,336	3
Houston, Tex.	510,397	3
Rochester, N. Y.	411,970	3
Birmingham, Ala.	407,851	3
Youngstown, O.	372,428	3
Akron, O.	349,705	3
Worcester, Mass.	306,194	3
Omaha-Council Bluffs, Nebr.-Ia.	287,698	3
San Diego, Cal.	256,368	3
Miami, Fla.	250,537	3
Richmond, Va.	245,674	3
Nashville, Tenn.	241,769	3
Salt Lake City, Utah	204,488	3
Jacksonville, Fla.	195,619	3
Chattanooga, Tenn.	193,215	3
Tulsa, Okla.	188,562	3
Des Moines, Ia.	183,973	3
Duluth-Superior, Minn.-Wis.	157,098	3
Knoxville, Tenn.	151,829	3
Beaumont-Port Arthur, Tex.	138,608	3
Wichita, Kans.	127,308	3
Little Rock, Ark.	126,724	3
Phoenix, Ariz.	121,828	3
Shreveport, La.	112,225	3
Springfield, Mo.	70,514	3

Two Full-Time Commercial Stations

Metropolitan District	Population	Total Number of Full-time Commercial Stations
Columbus, O.	365,796	2
Toledo, O.	341,663	2
Lowell-Lawrence-Haverhill, Mass.	334,969	2
Allentown-Bethlehem-Easton, Pa.	325,142	2
Norfolk-Portsmouth-Newport News, Va.	323,326	2
Fall River-New Bedford, Mass.	272,648	2
Dayton, O.	271,513	2
Bridgeport, Conn.	216,621	2
Grand Rapids, Mich.	209,873	2
Wheeling, W. Va.	196,340	2
Wilmington, Del.	188,974	2
Davenport-Rock Island-Moline, Ia.-Ill.	174,995	2
Harrisburg, Pa.	173,367	2
Huntington-Ashland, W. Va.-Ky.	170,979	2
Sacramento, Cal.	158,999	2
Waterbury, Conn.	144,822	2
Evansville, Ind.	141,614	2
Charleston, W. Va.	136,332	2
Fort Wayne, Ind.	134,385	2
Erie, Pa.	134,039	2
Savannah, Ga.	117,970	2
El Paso, Tex.	115,801	2
Mobile, Ala.	114,906	2
Charlotte, N. C.	112,986	2
Roanoke, Va.	110,593	2
Winston-Salem, N. C.	109,833	2
Portland, Me.	106,566	2
Atlantic City, N. J.	100,096	2
Charleston, S. C.	98,711	2
Fresno, Cal.	97,504	2
Montgomery, Ala.	93,697	2
Columbia, S. C.	89,555	2
Springfield, Ill.	89,484	2
Lincoln, Nebr.	88,191	2

Metropolitan District	Population	Total Number of Full-time Commercial Stations
Jackson, Miss.	88,003	2
Augusta, Ga.	87,809	2
Sioux City, Ia.	87,791	2
Manchester, N. H.	81,932	2
Asheville, N. C.	76,324	2
Macon, Ga.	74,830	2
Corpus Christi, Tex.	70,677	2
Amarillo, Tex.	53,463	2
One Full-Time Commercial Station		
New Haven, Conn.	308,228	1
Canton, O.	200,352	1
Trenton, N. J.	200,128	1
Utica-Rome, N. Y.	197,128	1
Flint, Mich.	188,554	1
Reading, Pa.	175,355	1
Peoria, Ill.	162,566	1
Saginaw-Bay City, Mich.	153,388	1
Johnstown, Pa.	151,781	1
South Bend, Ind.	147,022	1
Binghamton, N. Y.	145,156	1
Racine-Kenosha, Wis.	135,075	1
Lancaster, Pa.	132,037	1
San Jose, Cal.	129,367	1
Altoona, Pa.	114,094	1
Lansing, Mich.	110,356	1
Austin, Tex.	106,193	1
Rockford, Ill.	105,259	1
York, Pa.	92,627	1
Columbus, Ga.	92,478	1
St. Joseph, Mo.	86,991	1
Berkeley, Cal.	85,547	1
Terre Haute, Ind.	83,370	1
Stockton, Cal.	79,337	1
Madison, Wis.	78,349	1
Topeka, Kans.	77,749	1
Springfield, O.	77,406	1

Metropolitan District	Population	Total Number of Full-time Commercial Stations
Kalamazoo, Mich.	77,213	1
Cedar Rapids, Ia.	73,219	1
Greensboro, N. C.	73,055	1
Galveston, Tex.	71,677	1
Waco, Tex.	71,114	1
Durham, N. C.	69,683	1
Decatur, Ill.	65,764	1
Pueblo, Colo.	62,039	1
NO FULL-TIME COMMERCIAL STATIONS		
Hamilton-Middletown, O.	112,686	0
Waterloo, Ia.	67,050	0

Exhibit B

Typical Exclusive Clause of NBC.

"For the purpose of eliminating confusion on the part of the radio audience as to the affiliation and identity of the various individual stations comprising radio networks, you agree not to permit the use of your station's facilities by any radio network, other than ours, with which is permanently or occasionally associated any station serving wholly or partially a city or county of one million or more inhabitants."

Exhibit C

Typical Option Time Provision of NBC.

"Upon 28 days' notice, your station will broadcast network commercial programs for NBC during any periods requested by NBC within the hours designated below as Network Optional Time, provided, that because of your public responsibility your station may reject a network program the broadcasting of which would not be in the public interest, convenience and necessity.

"Network optional time will be as follows:

"Weekdays (New York City Time)	Sundays
10:00 A.M.—12:00 Noon	1:00— 4:00 P.M.
3:00 P.M.— 6:00 P.M.	5:00— 6:00 P.M.
7:00 P.M.— 7:30 P.M.	7:00—11:00 P.M."

APPENDIX D.

Excerpts from Legislative History of the Radio Act of 1927 and the Communications Act of 1934

There is set forth below the text of portions of the legislative history of the Radio Act of 1927 and the Communications Act of 1934 referred to in the brief but not there quoted in full. This appendix is to be read in connection with the pages of the brief which are mentioned below.

I.

Legislative History of the Disposition of the Power Over Monopoly in the Radio Act of 1927

At page 58 of the brief reference is made to Section 2 (C) of H. R. 13773, 67th Cong. 4th Sess. (1923). The language referred to reads as follows:

"C. The Secretary of Commerce, subject to the limitations of this act, in his discretion, may grant to any applicant therefor a station license provided for in sections 1 and 2 hereof.

"No license granted by the Secretary shall be for a longer term than 10 years, and any license granted may be revoked as hereinafter provided. Upon the expiration of any license the Secretary, in his discretion, upon application thereof, may grant a renewal of such license for the same or for a lesser period of time.

"The Secretary of Commerce is hereby authorized to refuse a station license to any person, company, or corporation, or any subsidiary thereof, which, in the judgment of the Secretary, is monopolizing or seeking to monopolize radio communication, directly or indirectly, through the control of the manufacture or sale of radio apparatus or by any other means. The granting of a license shall not estop the United States from prosecuting such person, company, or corporation for a violation of the law against monopolies or restraint of trade."

At page 59 of the brief reference is made to Section 2 (C) of H. R. 7357, 68th Cong., 1st Sess. (1924). The language referred to reads as follows:

"(C) The Secretary of Commerce, if in his judgment public convenience, interest, or necessity will be served thereby, and subject to the limitations of this act, may grant to any applicant therefor a station license provided for in sections 1 and 2 hereof.

"No license granted by the Secretary shall be for a longer term than ten years, and any license granted may be revoked as hereinafter provided. Upon the expiration of any license the Secretary, in his discretion, upon application therefor, may grant a renewal of such license for the same or for a lesser period of time.

"The Secretary of Commerce is hereby directed to refuse a station license to any person, company, or corporation, or any subsidiary thereof, which in his judgment is unlawfully monopolizing or seeking to unlawfully monopolize radio communication, directly or indirectly, through the control of the manufacture or sale of radio apparatus, through exclusive traffic arrangements, or by any other means. The granting of a license shall not estop the United States from prosecuting such person, company or corporation for a violation of the law against unlawful restraints and monopolies and/or combinations, contracts, or agreements in restraint of trade."

At page 59 of the brief reference is made to Section 2 (G) of H. R. 7357, 68th Cong., 1st Sess. (1924) (*cf.* Section 313 of the Communications Act of 1934), reading as follows:

"(G) All laws of the United States relating to unlawful restraints and monopolies and to combinations, contracts, or agreements in restraint of trade are hereby declared to be applicable to the manufacture and sale of and to trade in radio apparatus and devices entering into or affecting interstate or foreign commerce and to interstate or foreign radio communications. Whenever in any suit, action, or proceeding, civil or criminal, brought

under the provisions of any of said laws or in any proceedings brought to enforce or to review findings and orders of the Federal Trade Commission or other governmental agency in respect of any matters as to which said commission or other governmental agency is by law authorized to act, any licensee shall be found guilty of the violation of the provisions of such acts or any of them, the court, in addition to the penalties imposed by said acts, may adjudge, order, or decree that the license of such licensee shall, as of the date the decree or judgment becomes finally effective or as of such other date as the said decree shall fix, be revoked and that all rights under such license shall thereupon cease: *Provided, however,* That such licensee shall have the same right of appeal or review as is provided by law in respect of other decrees and judgments of said court, and the provision of said order, decree, or judgment revoking such license shall not become effective until such appeal or review shall have been finally disposed of."

On pages 59 and 63 of the brief reference is made to testimony of Secretary of Commerce Hoover in hearings before the Committee on the Merchant Marine and Fisheries, House of Representatives, 68th Cong., 1st Sess. on H. R. 7357 (1924). The part of the testimony of Secretary of Commerce Hoover referred to reads as follows:

"There are one or two points in the bill before the committee to which I would like to refer in more detail.

"Under the 1912 law, it has been held that the Secretary of Commerce has no discretion in the granting of licenses to stations. It is now obligatory to grant a license to every applicant irrespective of the interference which may be anticipated from the operation of the station. The present bill grants a discretionary power to be exercised in accordance with the public interest. I believe this is necessary in order that there shall be no question of vested right in the use of the ether.

"Section 2(c) of the bill provides that the Secretary of Commerce shall refuse a license to any concern which

is monopolizing or attempting to monopolize radio communication through control of the manufacture of apparatus or otherwise. I am in sympathy with the purpose shown in the paragraph to which I am referring; but I do not believe that the method there adopted is the proper one. The determination of whether or not a given concern is attempting to set up an illegal monopoly in radio communication is dependent upon the ascertainment of a vast number of facts, and the determination of difficult legal questions. We have a conflict between the general American principle of opposition to monopoly and an equally American principle, recognized by our patent laws, that an invention belongs exclusively to him who makes it, which necessarily means an exclusive right in the inventor. The problem does not properly belong to any administrative body.

"The Department of Commerce has no machinery with which to carry on the investigation necessary, nor is its organization suited for the decision of such questions. I much prefer the principle adopted in section 2 (g) under which the law and facts applicable are determined judicially, and I would suggest that the bill be so amended that the refusal of a license to a monopoly be placed upon the same basis, and determined in the same manner as is the revocation of a license under this section.

"One of the great difficulties in the regulative efforts of the department heretofore has been and will continue to be the lack of funds under the appropriations made for that purpose. The attempts to police 20,000 stations in this country with a total force of 29 inspectors is obviously an absurdity.

"The need for radio legislation is imperative although no law will be a panacea for all radio ills. The bill which you are now considering is a valuable step in the proper direction and, excepting as I have above indicated, I heartily commend it to your favorable consideration." (page 11)

On page 59 of the brief reference is made to Section 2 (C) of H. R. 5589, 69th Cong., 1st Sess. (1925). The section reads as follows:

"(C) The Secretary of Commerce, if public convenience, interest, or necessity will be served thereby, subject to the limitations of this act, may grant to any applicant therefor a station license provided for in sections 1 and 2 hereof.

"No license granted by the Secretary shall be for a longer term than five years, and any license granted may be revoked as hereinafter provided. Upon the expiration of any license the Secretary, in his discretion, upon application therefor, may grant from time to time renewals of such license for a like term.

"The Secretary of Commerce is hereby directed to refuse a station license and/or the permit hereinafter required for the construction of a station to any person, firm, company, or corporation, or any subsidiary thereof, which has been found guilty by any Federal court of unlawfully monopolizing or attempting to unlawfully monopolize radio communication, directly or indirectly, through the control of the manufacture or sale of radio apparatus, through exclusive traffic arrangements, or by any other means. The granting of a license shall not estop the United States or any person aggrieved from prosecuting such person, firm, company, or corporation for a violation of the law against unlawful restraints and monopolies and/or combinations, contracts, or agreements in restraint of trade."

On page 48 of the brief, reference is made to Section 13 of the Radio Act of 1927. The Section reads as follows:

"Sec. 13. The licensing authority is hereby directed to refuse a station license and/or the permit hereinafter required for the construction of a station to any person, firm, company, or corporation, or any subsidiary thereof, which has been finally adjudged guilty by a Federal court of unlawfully monopolizing or attempting unlaw-

fully to monopolize, after this Act takes effect, radio communication, directly or indirectly, through the control of the manufacture or sale of radio apparatus, through exclusive traffic arrangements, or by any other means or to have been using unfair methods of competition. The granting of a license shall not estop the United States or any person aggrieved from proceeding against such person, firm, company, or corporation for violating the law against unfair methods of competition or for a violation of the law against unlawful restraints and monopolies and/or combinations, contracts, or agreements in restraint of trade, or from instituting proceedings for the dissolution of such firm, company, or corporation."

II.

Attempts by Congressional Minority to Give the Commission Power to Determine the Facts of Monopoly

At page 59 of the brief reference is made to a series of amendments by the Congressional minority desiring that the licensing authority be given jurisdiction to determine the facts of monopoly, which were uniformly rejected.

One of these amendments appears at 67 Cong. Rec., Part 5, page 5557:

"• • • strike out the words 'The Secretary of Commerce may grant station licenses only upon written application therefor addressed to him, which application shall set forth such facts as he by,' and insert in lieu thereof the following:

'No license shall be issued under the provisions of this act unless the applicant shall have first filed in duplicate with the Secretary of Commerce and with the commission a written application therefor, accompanied by a statement in writing under oath or affirmation, containing copies of all traffic and other contracts in writing, and the substance of any and all other agreements or arrangements not in writing, between the applicant and any other person, firm, company, or corporation engaged

in the business of transmitting for pay or profit by wire or wireless intelligence, signals, visual images, or other communications, or in the manufacture, use, purchase, sale, and/or operation of apparatus, patented or unpatented, for the transmission and/or reception by wire and/or wireless of intelligence, signals, visual images, or other communications, and/or for the acquisition, purchase, use or sale of patents, patent rights, and licenses, and disclosing all shares of the capital stock or other share capital of/or interest owned by the applicant, directly or indirectly, or held, directly or indirectly, for such applicant's benefit in any corporation, association, firm, or person engaged in the manufacture, use or sale of apparatus or devices for wire or wireless transmission or communication, or in the business of transmitting by wire or wireless intelligence, signals, visual images, or other communications, and including such other facts as the Secretary of Commerce and/or the commission by,' "

This was rejected, *ibid.*, page 5560.

Another of these amendments appears at 67 Cong. Rec., Part 5, page 5561:

" 'On the information disclosed by the applicant in connection with his application as provided by subsection D, and upon such other proof as may appear, the commission shall determine whether or not the applicant is directly or indirectly in violation of the laws of the United States monopolizing or attempting to monopolize interstate or foreign commerce, or is engaged, directly or indirectly, in a violation or in an attempt to violate the laws of the United States against combinations, contracts, or agreements in restraint of trade; in the transmission by wireless for pay or profit intelligence, signals, visual images, or other communications; in the acquisition, sale, or use of patents, patent rights, and/or licenses for wireless inventions and discoveries; in the purchase, manufacture, sale, use, and/or operation of apparatus,

whether patented or unpatented, for the transmission and/or reception by wireless of intelligence, signals, visual images, or other communications. If said commission determines that as a matter of law or as a mixed question of law and fact said applicant is violating the laws of the United States in any of the above respects, it shall certify such finding to the Secretary of Commerce, and the latter shall refuse to grant the license applied for. A copy of the decision of the commission shall be served on the applicant, who shall thereupon have a right to a hearing before the commission and at which any party interested shall be entitled to be represented by counsel, and to submit such further evidence, oral or written, as may be material and competent. After said hearing the commission shall make its decision in writing, setting forth its findings of fact and rulings of law; and if it finds that the applicant is violating the laws of the United States in any of the above respects, it shall certify such finding to the Secretary of Commerce, and the latter shall refuse to grant said license. Any applicant for a license aggrieved by a decision of the commission shall have a right of appeal from the decision of the commission to the Court of Appeals of the District of Columbia, and the commission shall, upon notice of the entry of the appeal, certify under the signature and seal of the commission a copy of its decision stating its conclusions of fact and the rules of law applied in arriving at its decision, together with the evidence, if requested, upon which it based its decision. Upon all questions of fact the decision of the commission shall be final, but said court of appeals shall have the power of revision of the decision of the commission on all questions of law, and its decision thereon shall be final. During the pendency of any appeal to said court of appeals the commission shall have authority, in its discretion, if it deems the law to be doubtful and so declares in its opinion, to authorize the Secretary of Commerce to grant a license to the applicant upon such terms and conditions as it deems consistent with public interest, but upon a decision by the court of

appeals that said applicant is guilty on the facts found by the commission of violating the laws of the United States in any of the above respects, said license shall forthwith be revoked.' "

This amendment was rejected, *ibid.*, page 5563.

See also 67 Cong. Rec., Part 5, pages 5564-5.

Another attempted amendment appears at 67 Cong. Rec., Part 5, page 5565, and reads as follows:

" 'Sec. . The Federal radio commission shall also have all the powers to investigate and regulate and all the duties of investigating and/or regulating persons, firms, companies, and corporations engaged in interstate or foreign commerce in the business of transmitting for pay or profit by wireless intelligence, signals, visual images, or other communications, in the acquisition and sale of patents, patent rights, and licenses, for wireless inventions or discoveries, and/or in the use, purchase, sale, and/or operation of apparatus, patented or unpatented, for the transmission and/or reception by wireless of intelligence, signals, visual images, or other communications which the Interstate Commerce Commission has to investigate and regulate common carriers under "an Act to regulate commerce approved February 14, 1887," and all acts amendatory thereof and supplementary thereto. Excepting as otherwise provided by this act, in all proceedings under this section the procedure, including service of process, returns, hearings, attendance of witnesses, depositions, orders, and enforcement thereof and other methods, shall or may be the same as that prescribed or otherwise in proceedings before the Interstate Commerce Commission, and the jurisdiction of the courts with respect to proceedings under this section shall be like their jurisdiction over proceedings before the Interstate Commerce Commission.' "

This amendment was thrown out on a point of order. See also 67 Cong. Rec., Part 5, pages 5568-71, 5584.

At 67 Cong. Rec., Part 11, page 12507, appears the following amendment, which was also rejected:

"(f) On the information disclosed by the applicant in his application, the commission shall determine if the applicant, or any corporation or association affiliated therewith, through stock control or otherwise, is engaged directly or indirectly in a violation or in an attempt to violate the antitrust laws or the Federal Trade Commission act, approved September 26, 1914, as amended. If the commission determines that the applicant is so engaged, it shall serve notice of its determination upon the applicant by registered mail and give him due notice and opportunity for public hearing in respect of such determination. At the hearing the applicant shall be entitled to be represented in person or by counsel, and to submit further evidence, oral or written, in respect of the violation. After such hearing, or opportunity therefor, the commission shall make its decision in writing, setting forth its findings of fact and rulings of law. If the Commission finds that the applicant is engaged in any violation of or in an attempt to violate any such antitrust law or the Federal Trade Commission act, as amended, the commission shall refuse the issuance of the license."

III.

The Textual Development of Section 303 of the Communications Act of 1934

On page 63 of the brief reference is made to Section 1 (B) of H. R. 5589, 69th Cong., 1st Sess. (1925). The text of the language summarized reads as follows:

"(B) The Secretary of Commerce, from time to time, as public convenience, interest, or necessity, requires, shall (a) classify licensed radio stations and the operators required therein; (b) prescribe the nature of the service to be rendered by each class and each station within any class; (c) assign bands of frequencies or wave lengths to the various classes of stations and assign frequencies or

wave lengths for each individual station and determine the power which each station shall use and the time during which it may operate; (d) determine the location of classes of stations or individual stations and the kind of instruments to be used, with respect to their external effects; (e) regulate the purity and sharpness of the emissions from each station and of the apparatus therein; (f) establish areas or zones to be served by any station; (g) from time to time inspect licensed stations and their apparatus; (h) make such regulations not inconsistent with law as he may deem necessary to prevent interference between stations and to carry out the provisions of this act: *Provided, however,* That changes in the call letters, wave lengths, authorized power, in the character of emitted signals, or in the times of operation of any station shall not be made without the consent of the station licensee unless in the judgment of the Secretary such changes are required as a public necessity or in the public interest. The Secretary shall have authority to exclude from the requirements of any regulations any radio station upon railroad trains and the operators required therein, or to modify such regulations in his discretion: *Provided,* That such stations shall not be used for sending communications or signals for hire."

On pages 64 and 65 of the brief reference is made to Section 4 of the Radio Act of 1927, which reads as follows:

"SEC. 4. Except as otherwise provided in this Act, the commission, from time to time, as public convenience, interest, or necessity requires, shall—

(a) Classify radio stations;

(b) Prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class;

(c) Assign bands of frequencies or wave lengths to the various classes of stations, and assign frequencies or wave lengths for each individual station and determine

the power which each station shall use and the time during which it may operate;

(d) Determine the location of classes of stations or individual stations;

(e) Regulate the kind of apparatus to be used with respect to its external effects and the purity and sharpness of the emissions from each station and from the apparatus therein;

(f) Make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of this Act: *Provided, however,* That changes in the wave lengths, authorized power, in the character of emitted signals, or in the times of operation of any station, shall not be made without the consent of the station licensee unless, in the judgment of the commission, such changes will promote public convenience or interest or will serve public necessity or the provisions of this Act will be more fully complied with;

(g) Have authority to establish areas or zones to be served by any station;

(h) Have authority to make special regulations applicable to radio stations engaged in chain broadcasting;

(i) Have authority to make general rules and regulations requiring stations to keep such records of programs, transmissions of energy, communications, or signals as it may deem desirable;

(j) Have authority to exclude from the requirements of any regulations in whole or in part any radio station upon railroad rolling stock, or to modify such regulations in its discretion;

(k) Have authority to hold hearings, summon witnesses, administer oaths, compel the production of books, documents, and papers and to make such investigations

as may be necessary in the performance of its duties. The commission may make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, for law books, periodicals, and books of reference, and for printing and binding, as may be necessary for the execution of the functions vested in the commission and, as from time to time may be appropriated for by Congress. All expenditures of the commission shall be allowed and paid upon the presentation of itemized vouchers therefor approved by the chairman."

On page 65 of the brief reference is made to Section 303 of the Communications Act of 1934, which, as originally enacted, reads as follows:

"SEC. 303. Except as otherwise provided in this Act, the Commission from time to time, as public convenience, interest, or necessity requires, shall—

(a) Classify radio stations;

(b) Prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class;

(c) Assign bands of frequencies to the various classes of stations, and assign frequencies for each individual station and determine the power which each station shall use and the time during which it may operate;

(d) Determine the location of classes of stations or individual stations;

(e) Regulate the kind of apparatus to be used with respect to its external effects and the purity and sharpness of the emissions from each station and from the apparatus therein;

(f) Make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of this

Act: *Provided, however,* That changes in the frequencies, authorized power, or in the times of operation of any station, shall not be made without the consent of the station licensee unless, after a public hearing, the Commission shall determine that such changes will promote public convenience or interest or will serve public necessity, or the provisions of this Act will be more fully complied with;

(g) Study new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest;

(h) Have authority to establish areas or zones to be served by any station;

(i) Have authority to make special regulations applicable to radio stations engaged in chain broadcasting;

(j) Have authority to make general rules and regulations requiring stations to keep such records of programs, transmissions of energy, communications, or signals as it may deem desirable;

(k) Have authority to exclude from the requirements of any regulations in whole or in part any radio station upon railroad rolling stock, or to modify such regulations in its discretion;

(l) Have authority to prescribe the qualifications of station operators, to classify them according to the duties to be performed, to fix the forms of such licenses, and to issue them to such citizens of the United States as the Commission finds qualified;

(m) Have authority to suspend the license of any operator for a period not exceeding two years upon proof sufficient to satisfy the Commission that the licensee (1) has violated any provision of any Act or treaty binding on the United States which the Com-

mission is authorized by this Act to administer or any regulation made by the Commission under any such Act or treaty; or (2) has failed to carry out the lawful orders of the master of the vessel on which he is employed; or (3) has willfully damaged or permitted radio apparatus to be damaged; or (4) has transmitted superfluous radio communications or signals or radio communications containing profane or obscene words or language; or (5) has willfully or maliciously interfered with any other radio communications or signals;

(n) Have authority to inspect all transmitting apparatus to ascertain whether in construction and operation it conforms to the requirements of this Act, the rules and regulations of the Commission, and the license under which it is constructed or operated;

(o) Have authority to designate call letters of all stations;

(p) Have authority to cause to be published such call letters and such other announcements and data as in the judgment of the Commission may be required for the efficient operation of radio stations subject to the jurisdiction of the United States and for the proper enforcement of this Act;

(q) Have authority to require the painting and/or illumination of radio towers if and when in its judgment such towers constitute, or there is a reasonable possibility that they may constitute, a menace to air navigation."

On page 65 of the brief reference is made to amendments to Section 303 of the Communications Act of 1934. Those amendments were contained in Sections 5 and 6 of an Act to amend the Communications Act of 1934, 75th Cong., 1st Sess., reading as follows:

"SEC. 5. Paragraph (m) of section 303 of the Communications Act of 1934 is hereby amended to read as follows:

'(m) (1) Have authority to suspend the license of any operator upon proof sufficient to satisfy the Commission that the licensee——

'(A) has violated any provision of any Act, treaty, or convention binding on the United States, which the Commission is authorized to administer, or any regulation made by the Commission under any such Act, treaty, or convention; or

'(B) has failed to carry out a lawful order of the master or person lawfully in charge of the ship or aircraft on which he is employed; or

'(C) has willfully damaged or permitted radio apparatus or installations to be damaged; or

'(D) has transmitted superfluous radio communications or signals or communications containing profane or obscene words, language, or meaning, or has knowingly transmitted—

'(1) false or deceptive signals or communications, or

'(2) a call signal or letter which has not been assigned by proper authority to the station he is operating; or

'(E) has willfully or maliciously interfered with any other radio communications or signals; or

'(F) has obtained or attempted to obtain, or has assisted another to obtain or attempt to obtain, an operator's license by fraudulent means.

'(2) No order of suspension of any operator's license shall take effect until fifteen days' notice in writing thereof, stating the cause for the proposed suspension, has been given to the operator licensee who may make written application to the Commission at any time within said fifteen days for a hearing upon such order. The notice to the operator licensee shall not be effective until actually received by him, and from that time he shall have

fifteen days in which to mail the said application. In the event that physical conditions prevent mailing of the application at the expiration of the fifteen-day period, the application shall then be mailed as soon as possible thereafter, accompanied by a satisfactory explanation of the delay. Upon receipt by the Commission of such application for hearing, said order of suspension shall be held in abeyance until the conclusion of the hearing which shall be conducted under such rules as the Commission may prescribe. Upon the conclusion of said hearing the Commission may affirm, modify, or revoke said order of suspension.' "

"SEC. 6. (a) Subsection (n) of section 303 of the Communications Act of 1934 is hereby amended to read as follows:

'(n) Have authority to inspect all radio installations associated with stations required to be licensed by any Act or which are subject to the provisions of any Act, treaty, or convention binding on the United States, to ascertain whether in construction, installation, and operation they conform to the requirements of the rules and regulations of the Commission, the provisions of any Act, the terms of any treaty or convention binding on the United States, and the conditions of the license or other instrument of authorization under which they are constructed, installed, or operated.'

(b) Section 303 of the Communications Act of 1934 is hereby further amended by adding at the end thereof a new subsection to read as follows:

'(r) Make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act, or any international radio or wire communications treaty or convention, or regulations annexed thereto, including any treaty or convention insofar as it relates to the use of radio, to which the United States is or may hereafter become a party.' "

IV.

The Legislative History of Section 303(i) of the Communications Act of 1934

On page 69 of the brief reference is made to a colloquy between Senator Dill and Stephen B. Davis, Jr. in hearings before the Committee on Interstate Commerce of the Senate, 69th Cong., 1st Sess., on S. 1 and S. 1754 (1926). The colloquy appears at pages 123-124 of those hearings and reads as follows:

"Senator DILL. I want to ask Judge Davis a question about another subject not covered in this bill, but which I want to have considered; and that is the subject of chain broadcasting. During the past few months there has grown up a system of chain broadcasting, extending over the United States a great deal of the time. I say a great deal of the time—many nights a month—and the stations that are connected are of such widely varying meter lengths that the ordinary radio set that reaches out any distance is unable to get anything but that one program, and so, in effect, that one program monopolizes the air. I realize it is somewhat of a technical engineering problem, but it has seemed to many people, at least many who have written to me, that when stations are carrying on chain programs that they might be limited to the use of wave lengths adjoining or near enough to one another that they would not cover the entire dial. I do not know whether legislation ought to restrict that or whether it had better be done by regulations of the department. I want to get your opinion as to the advisability in some way protecting people who want to hear some other program than the one being broadcasted by chain broadcast.

"Mr. DAVIS. I may say that, of course, the department never has attempted to do anything one way or the other with regard to that situation. In other words, we have a station, WSAI, in Cincinnati. That station may choose for itself what program it wants to put on; decide for itself what program its listeners want to hear. If it

chooses to get one for itself, well and good. If it chooses to hook onto New York, well and good, so far as we are concerned, for the benefit of its listeners. That is no concern of the department. And, as you say, the interconnection between stations which makes it possible to cover the United States, or a very considerable portion of it, with one program, has grown up within the past year. It is that system which makes it possible for the President to make an address here in Washington and to be heard throughout the country as a whole. Now, obviously, each local station is authorized to use only one wave length under the present system. We assign a certain wave length and it is supposed to keep on that. If it did not we would have interference all over. So when it takes its program from New York, or wherever it may, it broadcasts it on its own wave length for that station, and the ordinary receiving set that is reasonably selective, I think, does not have very much trouble in finding some other program under present conditions. But never mind that.

"Now, it has been suggested that when there is a hook-up of that sort all of the connecting stations should be made to operate on the same wave length. That, I think, is your idea?

"Senator DILL. Well, or within a band near enough that would be practicable.

"Mr. DAVIS. That raises two questions. In the first place, the highly technical question as to whether those two stations can operate on the same wave length at the same time although they may be giving an identical program; and I believe I am safe in saying that under the present system of operation, that unless those stations are a very considerable distance apart it can not be done. In other words, you get a whistle between the two stations. In other words, that has been attempted between Boston and Springfield for some time. Those two places are only about 50 miles apart, and they have not been able to so synchronize it as to make it work to good advantage.

"In the second place, and perhaps more important, let us take WEAF, the hook-up which is the large one at present, and let us say that all of those lengths operate on the WEAF. If you will spot those wave lengths around you will find that that wave length could not be used without interference with other stations in the same city. In Philadelphia, for instance, you can not use it, without interference. There may be several other places where it can not be done. So that there are practical difficulties in the way of that situation at the present time. It may be that the art will progress where it can be done. At the present time there are practical difficulties in the way, and it can not be done. I doubt whether it could—

"Senator DILL (interposing). You would say they can not be operated on the same wave length, even if there was a band set aside for chain broadcasting?

"Mr. DAVIS. Yes, sir.

"Senator DILL. That would necessitate another band. Take 469, which is used here, there could be a band on either side of 469 on which those stations could be grouped. I recognize now the difficulties attending other stations having other wave lengths. But I come back to the proposition that I think inevitably we must enlarge the band for broadcasting.

"Mr. DAVIS. That may be, Senator.

"Senator DILL. I wonder whether it could not be that these chain broadcastings could be confined rather than playing all over the dial. I want that discussed in these hearings.

"Mr. DAVIS. Yes, and you require your stations to shift hour by hour throughout the night, which is an inconvenience, and a difficult thing. So there are practical questions that come in."

V.

Legislative History Relied Upon by the Commission

The Commission and the Government construe the legislative history of the Radio Act of 1927 and the Communications Act of 1934 with imagination. In the brief below, after discussing Congressional recognition of the benefits of chain broadcasting, the Government stated:

> "But certain dangers of the system were also noted—concentration of control of radio programs in one or a few chain managements; diminution of the station owner's responsibility for the programs of his station; duplication of chain program service by stations with overlapping service areas; and monopolization of the better radio frequencies by the chain stations."

Citation of authority for this statement was to the speech of Senator Dill, which appears at page 75 of appellants' brief. This speech has nothing to say about concentration of control of radio programs in one or a few chain managements, nor does it have anything to say about diminution of the station owner's responsibility for the programs of his station. The speech refers to monopoly only in the manner explained at pages 58-62 and 67-78 of appellants' brief.

Citation was also made to another Congressional colloquy in which Senator Dill took part. That colloquy deals with the question of the blanketing of the air by high-power stations and the consequent duplication of programs, also in the manner explained in appellants' brief. The only additional point discussed in this colloquy is the question of the equal *geographical* distribution of radio facilities.

The colloquy reads as follows:

> "Mr. DILL. This is one thing that might well be explained. The Senator is now, of course, voicing the same view that was held by the Congressman from Tennessee. The House bill provided that there should be equality of distribution of licenses between the different zones. That would mean that of the 89 wave lengths in the five zones, 17 of them should go to New England and the Atlantic

Coast; 17 to States like Ohio, Pennsylvania, Michigan, and the States in that zone; 17 to the Southern States; 17 to the Mississippi Valley States; and 17 to the Pacific Coast States. The areas and conditions for radio transmission are so vastly different in those different zones that the Senate conferees believed that that was not a fair distribution for the purpose of giving service to the people in each zone. So we wrote a provision and placed it in the bill instead of the House provision, providing that in the distribution of licenses the commission should make such distribution as would give fair, efficient, and equitable radio service to the different States and communities.

"The Senator knows that there are certain sections of the country where radio transmission of a powerful station will reach only a short distance and there are other sections of the country where the transmission will reach long distances. The value of the provision is that it enables any State or city to go into court and compel the commission by mandamus proceedings to give a license that will give them service if the commission does not do it. I think a community or State is in a far better position to get equitable service under the provisions of the bill, if the commission should fail to carry out the purposes of Congress, than it would be under an absolute distribution of 17 wave lengths to each of the five zones.

"Mr. McKellar. Would not that be tantamount to saying that it would be very much better if the whole matter were operated by one great concern in New York City? Would it not be the view of the Senator and is not the necessary result of his argument, if that be true, that it would be better for this one concern in New York to have absolute control?

"Mr. Watson. If we do not have any legislation, that is exactly what will happen.

"Mr. Dill. What is happening to-day is that the National Broadcasting Co., which is a part of the great Radio Trust, to say the least, if not a monopoly, is hook-

ing up stations in every community on their various wave lengths with high-powered stations and sending one program out, and they are forcing the little stations off the board so that the people cannot hear anything except the one program.

"There is no power to-day in the hands of the Department of Commerce to stop that practice. The radio commission will have the power to regulate and prevent it and give the independents a chance. It becomes a question of whether we would rather continue present conditions, which are getting worse and worse, without control of regulation, or whether we would rather intrust a commission, composed of men from five separate zones, to pass on these problems and decide them.

"Mr. McKELLAR. Mr. President, if the Senator will permit me, if his conference report bill actually constituted a commission that had control of the situation, there might be a great deal of force in his argument; but I wish to ask the Senator if it is not true that in all of the history of legislation, of the many commissions Congress has provided for and constituted, this is the only commission which has been established for one year and then its duties to be turned over to another officer?

"Mr. DILL. I will say that it is the only case where we have ever had divided control. I dislike very much the principle, but in order to secure legislation I agreed to it. However, I want, if I may, to clarify the situation with reference to the commission.

"The commission does not end with one year but continues, and may, and probably will, sit continuously. I wish the Senator from Tennessee would give me his attention, because he made a statement a while ago, and I should like to get this clear in his mind: We are providing in the proposed statute that the commission must sit continuously for one year, because we want to be certain that the commission itself will deal with these problems for a year and not be under the direction of the Secretary of Commerce, the President, or anybody else. We have then provided that after the expiration of the

first year the commissioners shall receive $30 a day; that all disputed matters shall be referred to them, and all decisions that are unsatisfactory to any person whose interests are affected—and that would include the owner of a radio receiving set—may be appealed to them. We have provided further that the commission may meet on the call of the chairman or a majority of the commission, and sit for such time as the commission may determine. So the talk about the commission dying at the end of the year has no justification in the language of the bill or in the practice which will undoubtedly follow.

"Mr. PITTMAN. Then why did the Senator fight for a commission?

"Mr. DILL. Because I wanted a commission to sit continuously, but in the compromise, to which I had to agree, this was the best we could get.

"Mr. PITTMAN. So the Senator has come back to the proposition that this is the best we could get?

"Mr. DILL. Absolutely; and I wish to say—

"Mr. MCKELLAR. Is not that the attitude of the Senator in relation to this entire legislation? Is it not true that the Senator does not approve of the proposed compromise but believes that the measure which he has reported out is a far better measure for the interests of the public than none at all?

"Mr. DILL. I will not say that I do not approve this compromise; I do approve it; but in approving it, I say that if I could have had my way, of course, I would have had some things in it that are not in it. If, however, I believed that this compromise bill did not protect the public interest, if I believed that the commission would not have complete control of the situation not only for the first year but continuously thereafter, I would be the first to help kill the conference report.

"I wish to state further to the Senator that I can not close my eyes to the fact that the radio industry is going to ruin so far as its usefulness to the ordinary citizen—the man with the little set— is concerned. The man with

the high-power set can secure fairly good radio service now, but the people with the little sets are almost helpless during the hours when large numbers of stations are broadcasting. I am anxious to remedy that situation.

"Mr. KING. Mr. President will the Senator yield?

"The PRESIDING OFFICER. Does the Senator from Nevada yield to the Senator from Utah?

"Mr. PITTMAN. I yield to the Senator from Utah.

"Mr. KING. I merely wish to ask a question: Does not the Department of Commerce—and that means, of course, the Secretary of Commerce—have power now to deal with the question; and if so, why does he permit this monopoly to exercise such a destructive force and crowd out and destroy the independents?

"Mr. DILL. Mr. President, the Secretary of Commerce attempted to exercise this power and did exercise it until last July. When Congress adjourned he asked the Attorney General for an opinion on the law, and the Attorney General said he did not think the Secretary had the power he was contending for under the statute of 1912. Therefore the Secretary of Commerce refused further to attempt to regulate and control the situation. He followed the advice of the Attorney General, and has issued everybody a license who has made application, and that has brought the present chaos.

"Mr. Lenroot and Mr. Bruce addressed the Chair.

"The PRESIDING OFFICER. Does the Senator from Nevada yield; and if so, to whom?

"Mr. LENROOT. I should like to ask the Senator from Washington a question in that connection.

"Mr. PITTMAN. I yield first to the Senator from Wisconsin, and then I will yield to the Senator from Maryland.

"Mr. LENROOT. Is it not true that the court in Chicago did hold that the Secretary did not have the power?

"Mr. DILL. I must say that the court in Chicago held in the case of Zenith Radio Corporation that the Secretary had no right to limit them as to wave lengths, because they had an experimental station. My personal

opinion, since this question is up here, is that if the Secretary of Commerce had tried to exercise the power as previously he could have prevented most of the confusion which has arisen, but he believed the court decision would lead to other decisions that would take away his power; and so he went to the Attorney General, and then followed the decision rendered by that official.

"Mr. BRUCE. Mr. President, will the Senator from Nevada yield to me for a moment? I should like to ask the Senator from Washington a question.

"Mr. PITTMAN. I yield.

"Mr. BRUCE: Is it not a fact that Secretary Hoover favors the bill in its present form as the best measure obtainable?

"Mr. DILL. I think Secretary Hoover favors this bill because as a number of the conferees say themselves, radio conditions are so choatic that we must have legislation, and that this is a bill which will bring order out of chaos." [68 Cong. Rec., Part 3, p. 3031; 69th Cong., 2nd Sess., 1927]

The problem of the geographical distribution of radio facilities occupied Congressional attention before and after the enactment of the Radio Act of 1927.

Section 9 of the Radio Act of 1927 contained the following provision:

"In considering applications for licenses and renewals of licenses, when and in so far as there is a demand for the same, the licensing authority shall make such a distribution of licenses, bands of frequency of wave lengths, periods of time for operation, and of power among the different States and communities as to give fair, efficient, and equitable radio service to each of the same."

The geographical location of talent centers and sources of greatest revenue had, before 1927, caused the most pow-

erful stations to be located in and around such centers, and there was thus a concentration of radio power in the East. After the enactment of the Radio Act of 1927 the Radio Commission, pursuant to its duty to license in the public interest, convenience or necessity, took account of the practicalities of the manner in which the people of the United States could receive the best overall radio service and continued to license high-powered stations in these centers.*

The concentration of powerful stations in the East, however, gave to those Congressmen who believed that any locality was equally able to support high-power stations, both with revenue and with talent, the opportunity to raise the ever-popular cry of "monopoly." They therefore criticized the Radio Commission for its licensing policy in terms of monopoly.

In 1928 there was written into the Radio Act of 1927 an amendment which is frequently referred to as the "Davis amendment", and reads as follows:

> "It is hereby declared that the people of all the zones established by section 2 of this Act are entitled to equality of radio broadcasting service, both of transmission and of reception, and in order to provide said equality the licensing authority shall as nearly as possible make and maintain an equal allocation of broadcasting licenses, of bands of frequency or wave lengths, of periods of time for operation, and of station power, to each of said zones when and in so far as there are applications therefor; and shall make a fair and equitable allocation of licenses, wave lengths, time for operation, and station power to each of the States, the District of Columbia, the Territories and possessions of the United States

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* The theory of the Commission was that fair, efficient and equitable service meant the opportunity to receive programs. The theory of some Congressmen was that facilities should be geographically distributed so that the opportunity to make money from broadcasting would be distributed, without regard to the effect of such distribution of facilities upon service. *See* 69 Cong. Rec. p. 4500.

within each zone, according to population. The licensing authority shall carry into effect the equality of broadcasting service hereinbefore directed, whenever necessary or proper, by granting or refusing licenses or renewals of licenses, by changing periods of time for operation, and by increasing or decreasing station power, when applications are made for licenses or renewals of licenses: *Provided*, That if and when there is a lack of applications from any zone for the proportionate share of licenses, wave lengths, time of operation, or station power to which such zone is entitled, the licensing authority may issue licenses for the balance of the proportion not applied for from any zone, to applicants from other zones for a temporary period of ninety days each, and shall specifically designate that said apportionment is only for said temporary period. Allocations shall be charged to the State, District, Territory, or possession wherein the studio of the station is located and not where the transmitter is located." [Public—No. 105—70th Cong. (S. 2317), Section 5.]

The purpose of the amendment was to make equal geographical distribution of facilities more mandatory upon the Radio Commission. It should be noted that the Davis amendment was found impractical, and was repealed in 1936, when there was substituted for the Davis amendment the following language:

"(b) In considering applications for licenses, and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same." [Public—No. 652—74th Cong. (S. 2243), Section 2.]

It is the legislative history of the Davis amendment that the Government cited in support of the statement that after

the enactment of the Radio Act of 1927 the merits and defects of chain broadcasting were repeatedly discussed in Congress. In so far as chain broadcasting was discussed in the debates leading to the enactment of the Davis amendment, it was discussed as the same old problem of the blanketing of the air by high-powered stations and the duplication of programs.* The development of more selective receiving sets and proper allocation on the part of the Commission, as described at page 71 of appellants' brief, had not yet occurred.

A representative portion of the debate in the House of Representatives, with reference to the distribution of facilities provided for in the Davis amendment, reads as follows:

> "[Mr. Abernethy.] Now what have we? We have the chairman of the Committee on the Merchant Marine and Fisheries fighting for this amendment. Why? Because he is a fair man and wants to keep faith with this House. He wants to keep faith with the country at large. He is not in favor of two or three big stations controlling all the power and sending out radio at $6,000 an hour for Lydia Pinkham's remedy and Pink Pills for Pale People. That is what you have now. Yes; and Wrigley's chewing gum, and Smith's cough drops, and Silver Cord tires, and occasionally David Lawrence gets on the air.
>
> "I was down in my home town the other day and my boy had bought a radio set, and I was trying to get some stations. I had heard of one that Mr. Davis had over in Tennessee, and I started at zero and went as far as the dial went, and every time I got on the dial I would hear about Lydia Pinkham's remedy and pink pills for pale people, and I never did get Judge Davis's station, and I do not really believe he has one at Nashville. [Laughter.]
>
> "Mr. Celler. Does the gentleman think that the radio station can be kept going without this advertising?

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* For example, Senator Dill discusses the practicability of broadcasting chain programs on one wave length, 69 Cong. Rec. pp. 5157-8, 5290. See also, in addition to the pages cited by the Government, 69 Cong. Rec. pp. 4488, 4489, 4493, 4497, 4498, 4499, 4500, 4568, 5160, 5293, 5157, 5158.

"Mr. Abernethy. I will say to the gentleman that the Governor of North Carolina asked the Members of the House from North Carolina to vote down the amendments offered by the gentlemen from Oklahoma [Mr. McKeown] and the gentleman from Tennessee [Mr. Davis] on the assurance that North Carolina would get consideration. We have one little station in the city of Raleigh that has 500 watts, and we have been promised 500 more, with the suggestion that probably the time might be divided. I think that if Judge Sykes has the power given to him he is going to make a fight for us; but the trouble is he can not make it if you do not give him the power. Just write this Davis amendment in here and divide this power equally between the five zones.

"Take the great western country. The fifth zone has only 61,785 watts, while one station alone in New York has 50,000 watts. That is the situation with reference to the whole western coast, and I am talking to you men from that western country. Now listen, Zone 4 has 164,870 watts while the State of New York alone has 162,500 watts. The southern zone, the third zone, has 47,000 watts, and second zone has 106,000 watts.

"Now, gentlemen, nobody wants to cut down the power. Nobody wants to destroy these big stations; nobody wants to take away from the people their right to hear jazz, but we want this commission to understand that as far as the balance of the country is concerned that it has a direct mandate from Congress that when we write a radio law that there shall be an equal distribution throughout the country that they should meet that, and not come here and say they can not do it, and they should not fill the papers full of aspersions against Congress, as some of them have done, and I do not refer to Judge Sykes, either. [Applause.]" (69th Cong. Rec., Pt. 4, p. 4498).

Senator Dill accurately stated, however, that the Davis amendment had nothing to do with chain broadcasting. See

the following colloquies which took place upon the floor of the Senate:

"Mr. Barkley: Let me ask the Senator another question. We have all received many protests from people in our States and all over the country with reference to the activities or lack of activities of the Radio Commission with respect to chain broadcasting stations, and monopolies, and all that. To what extent does this proposed legislation cure that situation?

"Mr. Dill: This proposed legislation does not attempt to control chain broadcasting. The commission already has power to control chain broadcasting. Nor does it attempt to meet the so-called monopoly complaints as such. If the Senator will bring that up a little later when I discuss the chain system, I will be glad to answer him further" (69 Cong. Rec., Pt. 5, p. 5156).

* * * * * * *

"Mr. Watson: There seems to be what I regard as a mistaken impression, that is, that very high-powered stations are essential to chain broadcasting. I wish the Senator would explain that that is not true.

"Mr. Dill: I may say that the high-powered station has nothing whatever to do with the broadcasting by the chain system, that the wires simply carry the program to the station, and one station may broadcast at 500 and one at 5,000 and one at 10,000. Each is individual in its own field. The power of the originating station has nothing to do with it.

"Mr. Smith: Mr. President, will the Senator yield?

"Mr. Dill: I yield.

"Mr. Smith: Is there any provision in the bill under which the American public can get now and then a space during the evening performance to hear something sensible, rather than be drowned out with jazz?

"Mr. Dill: I must say to the Senator that we have not written in the bill any direction to the commission as to allowing only jazz programs or only some other kind of programs. In other words, that would mean giving the

commission the power of censorship, and that is not desirable'' (69 Cong. Rec., Pt. 5, p. 5160).

It should, therefore, be recognized that the legislative history of the Davis amendment cited by the Commission and the government has nothing to do with the ''merits and defects of chain broadcasting'' as an anti-trust matter. Although there was further discussion of chain broadcasting in 1928 as a problem of blanketing and duplication, Congressional discussion of monopoly did not relate to those aspects of chain broadcasting denominated ''restraints on competition'' by the Commission in the instant proceeding.

Legislative history cited by the Government as to what took place in 1937 does not affect the analysis made here and made in appellants' brief, nor can Congressional action occurring three years after the passage of the Communications Act of 1934 affect its interpretation.

APPENDIX E.

Excerpts from Proceedings in Docket No. 5060

Order No. 37 authorized the Commission to hold hearings in connection with its investigation. On April 6, 1938, the Commission authorized a committee composed of Commissioners Sykes, Brown, Walker and Chairman McNinch to supervise and direct the investigation under Order No. 37 and to hold hearings in connection therewith. Hearings were commenced on November 14, 1938.

Subjects Covered

The hearings were opened by a statement by Chairman McNinch who read from a preliminary letter to all networks and stations specifying twenty aspects of broadcasting upon which all national and regional networks would be called upon to present evidence:

"In connection with the first phase of the testimony, Network Operations, all national and regional network will be called upon to present evidence dealing with their operations, specifically as to:

"1. Corporate and financial history of network organizations including detailed information on both direct and indirect ownership or control thereof;

"2. Nature and character of activities engaged in by network from the date of its organization;

"3. Name, number and location of all stations now or previously licensed to or affiliated in any manner with network with particular reference to the reasons for entering into or terminating any such affiliation and the basis upon which additional affiliations are entered into;

"4. Nature of contracts, agreements or other arrangements between network and affiliates including reasons for various provisions of such contracts, agreements, or other arrangements, and history of the same;

"5. Classification and grouping of stations connected with network as basic supplemental, and so forth, with reasons for the same;

"6. Financial arrangements between stations and affiliates, including basis for charges made by networks and affiliates;

"7. The history and development of the network program policy, particularly with reference to standards which programs must meet, diversification, accommodation of program characteristics to the requirements of the area served, and program and advertising continuity;

"8. Extent to which affiliates are required to conform to network program policy and extent to which affiliates control or influence policy;

"9. History and development of operating policy and procedure with particular reference to contracts and agreements with wire companies for program transmission;

"10. History and development of policy with respect to sale of time for advertising or other purposes, particularly with respect to standards applicable to products or services for which advertising is accepted;

"11. Detailed information as to the hours which network controls over affiliated stations, the number of such hours actually used for network, commercial purposes over affiliated stations and the number of hours of network sustaining programs actually used by affiliates;

"12. Rights of network and affiliates in event affiliate desires to substitute a local program for a network program;

"13. History and development of agreements, contracts, or other arrangements between networks and advertisers, or other program sponsors, particularly and in detail agreements, contracts, or other arrangements with persons or organizations acting as agencies for the

placing of broadcast advertising or the sale of time over the network;

"14. History and development of policies with reference to the development of program talent and facilities of network organization devoted to that purpose;

"15. Explanation and details of the organization, function, policies and practices of any agency directly or indirectly controlled by the network organization which retains and procures talent for the purpose of selling such talent to the sponsors of commercial radio programs;

"16. The nature of the service rendered by each station licensed to the network, particularly with respect to the amount of program origination for network purposes at such stations and with respect to the nature of the local service rendered by such stations;

"17. Name of any national advertising agency, user, or national representative of a station whose officers, directors, stockholders or proprietors hold any securities of the network organization, and the exact extent of such holdings;

"18. Name of any national advertising agency, user, or national representative of a station, the securities of which are held by the network, its officers, directors, or proprietors;

"19. Any relationship that may exist between the network and any national advertising agency, user, or national representative of a station through officers, directors, proprietors, employees, or security holders in common, and the exact nature and extent of such relationship;

"20. Extent of program duplication in the primary and secondary service areas of stations carrying the network programs, particularly the percentage of population in the primary service area of each network station which may receive a network program as primary service from such station and from other network stations, the

percentage of secondary service area of each network station which receives a network program as secondary service from such station and from other network stations, the number and extent of such duplications and amount of duplication required for adequate service in chain programs. The primary and secondary service areas shall be considered as defined in the Commission's proposed Rules and Regulations governing standard broadcast stations and Standards of Good Engineering Practices concerning the same." (Tr., pp. 9-12.)

Procedure; Purpose

Thereafter, Chairman McNinch had the following to say with reference to the procedure to be followed and the purposes of the investigation:

"In order to expedite the hearing as much as possible the networks, the transcription companies and those persons and organizations who have filed notices of appearances will be permitted to be represented by counsel in presenting direct testimony. *Cross-examination of witnesses generally will be by the Committee and by its staff.* Parties desiring to ask questions should, if at all possible, hand the Commission's counsel such questions in writing. Departure from this procedure will be allowed only where the Committee shall decide that the ends of justice will be served thereby, upon request pointing out the interest of the party desiring cross-examination and the purpose and scope thereof. The Commission shall be furnished with fourteen copies of each exhibit offered in evidence (Tr., p. 13).

. . . . . .

"The purpose and object of this investigation is to develop facts for the information of the Commission and public concerning the matters included in Order No. 37. On the basis of the facts developed in the course of the investigation, *appropriate rules and regulations dealing with such matters will be promulgated by the Commission, and if such facts demonstrate the necessity therefor,*

legislative recommendations made to the Congress by the Commission.

"The Committee will not permit this hearing to be used as a sounding board for any person or organization. We are after facts and intend to get them. Only relevant opinions of those qualified to speak may be admitted for whatever light they may throw upon the problems involved in this investigation. I have emphasized that paragraph in order that none may miss it or misunderstand its purport or the intention of the Committee, that this is a factual inquiry and it will be held to that, plus the expression of expert opinion that is relevant to matters at issue" (Tr., pp. 13-14). (Emphasis added.)

It appears that the Commission conducted a broad investigation into practically all aspects of radio broadcasting. The object of the investigation was to inform the Commission not only with respect to what rules and regulations it might make but also to inform the Commission with respect to what recommendations it might make to Congress. NBC and others requested by the Commission to furnish information cooperated fully and responded broadly to the expressed desires of the Commission. In addition to requesting various national networks, regional networks, station licensees and transcription and recording companies to present evidence, the Commission requested information by questionnaire from licensees of stations and from holders of stock in licensee corporations.

During the course of the hearing it appeared that Commission counsel conceived of the hearing as one to which there were no parties:

"Mr. Hennessey: If the Commission please, before Mr. Dempsey resumes his examination of Mr. Tuthill, I would like to request that when he asks questions suggested to him by counsel for other parties in this proceeding or questions which are not his own that the source of those questions be indicated as they are asked. That has been the procedure heretofore.

"Mr. Dempsey: *Mr. Chairman, in the first place, I would like to point out that there are no parties to this proceeding at all.* Almost all of the questions that I have asked have been based on information obtained in one place or another. We have had to make inquiries of considerable scope from a number of people to phrase any of these questions." (Tr., pp. 284-285.) (Emphasis added.)

Commissioner Brown stated that the proceeding was not an adversary one:

"Commissioner Brown: *This is not an adversary proceeding. It is a proceeding to obtain facts.* It is the view of the Commission that wherever facts pertinent to the issues as outlined should be submitted, that they may be submitted. When questions are asked, of course, counsel has the right to object to the question." (Tr., p. 287.) (Emphasis added.)

Commissioner Walker stated that the proceeding was one which would not be appealed anywhere:

"Commissioner Walker: The motion is overruled.

"*Just as an observation, this not being a case that will be appealed anywhere, I assume that counsel do not care to note exceptions on the record, but if they do care to do so, they may.*" (Tr., pp. 7190-7191.) (Emphasis added.)

The last person to testify before the Commission did so on May 19, 1939. Thereafter, various persons associated with the Commission requested additional matter from NBC, which was supplied.

Digest and Analysis; Sources of Information

The General Counsel for the Commission directed the staff of the Commission to make its "Digest and Analysis of Evidence Presented in the Hearing on Commission Or-

der No. 37 (Docket 5060) and *of the Files of the Commission.*" At page 2 of that Digest it is stated:

"The record in this hearing is composed of 8,713 pages of testimony and 674 exhibits; there were 94 witnesses heard and the hearing consumed 73 days, extending over a period of six months.

"*This report is based upon evidence from these sources and also from information otherwise in the records of the Commission.*" (Emphasis added.)

Committee Report of June 12, 1940

After the Digest was made and on June 12, 1940, there was issued the report of the committee appointed by the Commission to supervise the investigation, which was signed by Commissioners Brown, Walker and Thompson. The memorandum of submittal to the Federal Communications Commission reads in part as follows:

"This report deals with the following subjects: The Predominance of Network Organizations in the Radiobroadcast Field; Contractual Relation of Network Organizations to Station Licensees; Radiobroadcasting and the Supply of Talent; Transcription Services in the Radiobroadcast Industry; and Multiple Ownership of Radiobroadcast Stations. There is attached to the report, as Appendix A, an exhaustive and detailed digest of the evidence received by this Committee during the extensive hearings held by it as well as of other related material in the official files of the Commission. There is also attached, as Appendix B, a report compiled by the Law Department entitled 'Report of Persons and Other Entities Holding Stock Interest In, Control Over, or Official Relationship to More Than One Standard Broadcast Station Reported to the Federal Communications Commission to April 1, 1940.'

"*The Committee is of the opinion that these materials form an adequate basis upon which the Commission may proceed to a consideration of the need for a revision of*

its licensing policy in the radiobroadcast field in order to correct the serious inequities and arbitrary practices which have developed in connection with chain broadcasting" (p. i.) (Emphasis added:)

Oral Argument; Jurisdiction; Power to Deal with Contracts

After the issuance of this report and on November 28, 1940, the Commission announced its procedure for oral argument on that report, which was held on December 2 and 3, 1940. This procedure is found in Appendix C to the Report on Chain Broadcasting and sets forth twelve draft regulations relating to chain broadcasting. It should be noticed that there were only five days between the issuance of the procedure for oral argument and the oral argument itself. Upon the oral argument counsel for NBC took the position that the regulations embodied in the procedure for the oral argument were beyond the jurisdiction of the Commission.

The oral argument was held before Commission Chairman Fly and Commissioners Thompson, Walker, Case, Craven and Payne.

In an opening statement, Telford Taylor, general counsel to the Federal Communications Commission, stated:

"From the very outset it was recognized, and it was so stated by Chairman McNinch, at the opening of the hearings, that the facts elicited might lead to regulations which the Commission presently has power to promulgate, *and that also the facts might show the necessity for recommendations to Congress with respect to matters outside the Commission's jurisdiction under existing law"* (Tr., pp. 8719-20).

* * * * * *

"The National's brief criticizes the report for—as they put it—'discarding Chairman McNinch's suggestion to which I have already referred, made at the outset of the hearings, that it might be necessary to seek additional

legislation. Now, with all respect, I can find no basis for such a construction of the Report. The Report is silent on the question of existing authority to deal with such matters as talents supply and transcription. Chairman McNinch's suggestion that it might be necessary to seek additional legislation was not discarded. The Committee's letter transmitting its Report to the Commission expressly recognizes that further legislation may be necessary.

"Now, in one particular field the Committee did express an opinion on the Commission's power under existing law. It stated a believe (*sic*) that the Commission presently has authority to pass regulations governing contracts between networks and their affiliates. * * * The Law Department of the Commission believes that this body does have such authority and we are prepared to present and will present argument on that question. But, in any event, as is pointed out in the brief filed for the Independent Radio Network Affiliates, Incorporated, the answer to that question is not, at this stage of the proceeding, a matter of first importance. *Since this inquiry has not been limited to the existing powers of the Commission but includes the possibility of legislative recommendations the point to be first resolved is the question of what regulations are desirable*" (Tr., pp. 8729-30). (Emphasis added.)

In a further opening statement, Joseph Rauh, Assistant General Counsel, in discussing the jurisdiction of the Commission to promulgate its proposed regulations, stated:

"*Therefore, if such conclusions can be drawn from the record and in view of the fact that this a legislative proceeding (sic), from any other source* there would seem to be clear jurisdiction based on the very simple proposition that the Commission has power to deal with contractual relationships entered into by radio stations which affect their ability to operate in the public interest" (Tr., p. 8735). (Emphasis added.)

Further Information

Thereafter, various persons associated with the Commission requested further material from NBC. For example, on December 20, 1940, the Secretary of the Commission requested information of NBC concerning changes in its Program Department, Artists Bureau and the relationship between the Red and Blue networks, and on April 11 he requested of NBC certain additional information with respect to taxes.

Report of May 2, 1941

On May 2, 1941, the Commission issued its Report on Chain Broadcasting together with its original Order. At page 3 of the Report is found the following statement:

> "The views expressed and the regulations adopted herein are, we believe, fully supported by the evidence adduced at the hearings by the networks and other interested parties. With respect to such matters as the present allocation and ownership of particular broadcasting facilities, we have utilized our current official records. The historical data in the early chapters includes matters of common knowledge or of public record. In a proceeding of this character, there is no reason to exclude such matters of record from consideration."

The Report was signed by Commission Chairman Fly, Commissioners Walker, Payne, Thompson and Wakefield. Commissioners Case and Craven dissented.

White Resolution; Conferences; Amendment

From June 2 to 20, 1941, extensive hearings were held before the Senate Committee on Interstate Commerce on the White resolution which called for a study of the Commission's chain broadcasting regulations.

During July and August, following these hearings, a series of conferences was held between the industry and the Commission with reference to regulations.

On September 12, 1941, there was argued a petition of the Mutual Broadcasting Company requesting certain amendments in the regulations. And on October 11, 1941, the Commission issued its Supplemental Report on Chain Broadcasting, together with its Order amending the original Order. That Report contains the following statement:

> "After a careful study of the testimony presented before the Senate Committee on Interstate Commerce, *of the considerations presented at the conferences which followed the hearings*, and of the oral arguments presented at the hearing on Mutual's petition and of the briefs filed at that time, and after a thorough reconsideration of the entire subject, the Commission has decided to amend three of the Chain Broadcasting Regulations • • •." (Emphasis added.)